

January 8, 2019

Virginia:

AT A REGULAR MEETING of the Nelson County Broadband Authority Board at 1:00 p.m. in the General District Courtroom located on the third floor of the Nelson County Courthouse, Lovingston Virginia.

Present: Larry D. Saunders, South District – Vice Chair
Gary W. Strong – Central District
Thomas D. Harvey, North District
Thomas H. Bruguire, Jr. West District -- Chair
Jesse N. Rutherford – East District
Stephen A. Carter, County Administrator
Grace Mawyer, Secretary
Candice W. McGarry, Treasurer
Susan Rorrer, Director of Information Systems

Absent: None

I. Call to Order

Mr. Bruguire called the meeting to order at 1:01 PM with all Members present to establish a quorum.

II. Public Comments

1. Ron Enders, 395 Goodwin Creek Trail, Afton

Mr. Enders stated the reason he came was to talk about the upcoming changes to broadband. He is really excited about it and added he is on the system now and paid to have the fiber come up his drive. He was concerned about how he will be serviced in the future. He noted that when the fiber was put in, the job was not done very well. It has no marker in the cable, so they cannot find where it is. Also, he stated it is not buried very deep. He inquired if it were to fail in the future, would they be losing technical support, and asked if they would be able to support the customer and come put in new fiber. He stated that he has telephone poles all the way to his house, and he would just as well switch over now. But, if he could be assured that they have the capability of servicing his connection, then he won't be worried. He asked how they can do that if they are losing their technical and installation staff with it all going over to the Co-op.

Mr. Bruguire advised Mr. Enders that they will get back with him on an answer. He said as soon as they know, they will let him know. Mr. Enders stated if possible, he would like to just switch over to the Co-op and not have the worry. He added that they're going to be putting in the lines, and he has poles going all the way to the house. Mr. Bruguire stated that they would address this later in the meeting and thanked Mr. Enders for his comments.

III. Reorganization, Election of Officers, and 2019 Meeting Schedule

Mr. Bruguire turned the chair over to Mr. Carter for conduct of the organizational meeting.

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Mr. Carter referenced the authority's bylaws that prescribed an annual organizational meeting at which the Chair, Vice Chair, Secretary, and Treasurer for the year were set as well as the meeting schedule.

- A. Chair & Vice Chair
- B. Secretary & Treasurer
- C. 2019 Meeting Schedule

Mr. Carter advised that staff has come up with the recommendation of Mr. Saunders for Chair, Mr. Harvey for Vice Chair, Ms. Mawyer for Secretary, and Ms. McGarry for Treasurer. He added that the meeting schedule had been proposed to be the second Tuesday of each odd month of the year at 1 pm in the General District Courtroom, just prior to the regular session of the Board of Supervisors.

Mr. Bruguere made the motion to accept the slate of officers as presented by staff and Mr. Strong seconded the motion. Mr. Carter asked if that included the schedule, and Mr. Bruguere said yes. There being no further discussion, Members voted unanimously (5-0) by roll call vote to approve the motion and set the meeting schedule as follows: Second Tuesday of January, March, May, July, September, and November at 1 pm in General District Courtroom (Just prior to the regular BOS meetings).

IV. Consent Agenda

A. Resolution – R2019-01 Minutes for Approval

Mr. Rutherford moved to approve resolution R2019-01 Minutes for Approval and Mr. Strong seconded the motion. There being no further discussion, Members voted unanimously (5-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2019-01
NELSON COUNTY BROADBAND AUTHORITY
APPROVAL OF MEETING MINUTES
(December 11, 2018)**

RESOLVED, by the Nelson County Broadband Authority that the minutes of said Authority meeting conducted on **December 11, 2018** be and hereby are approved and authorized for entry into the official record of the Broadband Authority meetings.

V. New/Unfinished Business

A. Network Operations Report

Ms. Susan Rorrer presented the following report:

I. Operational

Total Number of Connections on 11/30/2018: 610

Installations for December: 7

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Total Number of Connections on 12/31/2018:	617
Pending Installations:	20
Total Customers on 12/31/2018:	637

II. Administrative

None

III. Financial

Attached

Ms. Rorrer noted she believes that the number of installations currently is actually a little bit higher, and stated we're probably down to between 10 and 15 connections remaining to be connected on the network at this point. She added that the total customer number of 637 may be elevated a little bit as they're continuing to refine their database. She noted they had some customers who were in the system as pending installations who were actually people who had decided they did not want service. She stated that despite this, the total customer number remains around 600 or a little higher. She added that Mr. Beam is wrapping up the majority of installations that he has on the schedule, and she reiterated that number is down to about 10 or so. Ms. Rorrer noted they are continuing to get additional contracts; there are people who still want to connect even though they're paying the full cost of installation.

Mr. Strong commented that from seeing his work and talking to him, he believes that Mr. Beam is extremely qualified and does excellent work. He noted that the burial specialist aspect is on the other side of the spectrum. He commented that it may be a while before a transition takes place in the network and questioned whether Mr. Beam is still poised to address serious concerns of cables rising from the ground or improperly laid. He asked Ms. Rorrer if she is managing that problem with him still or has he written it off. Ms. Rorrer noted that no changes have been made regarding Mr. Beam's relationship with the County at this point. If anyone were to call with concerns or issues, he would continue to respond to those. Mr. Strong asked if she has heard of Mr. Enders' issue before. She confirmed that she was familiar with it. She assured Mr. Beam has always gone back and corrected any deficiencies in installation or fiber cuts that resulted from his work at no charge to the County.

Ms. Rorrer then offered to address Mr. Enders' question and asked where Mr. Enders was with his amortization. He said he had paid it all upfront. She stated his installation from CVEC would be a no cost installation to him, so he could switch over providing he does not have a contract with a current service provider. She added that CVEC has not yet determined to what extent it would use our network to serve customers, but it would be their responsibility in the future to correct any problems or make any repairs necessary to his installation. She noted that if Mr. Enders has concerns about the fiber in the ground, it may be wise to get new fiber that is installed above ground. She added that who he wants his service provider to be will come into play, as she thinks CVEC, or CVSI, in larger neighborhoods and widespread installations, intends to serve those customers in the future over the NCBA fiber. She stated that in more spotty installs, they may intend to build out their other network in addition to the NCBA network. She said it may be something Mr. Enders will want to follow moving forward and maybe have some discussions with CVSI.

Mr. Harvey noted that Mr. Beam has to give them drawings of all the lines and he believes he's still working on that. He thought some of the cable run back there was traceable. Ms. Rorrer stated some may have been replaced. Mr. Harvey added that when we do this transaction, the new broadband company will own everything. He said if someone were to have a problem, there's no need to call the County as it will be the new company's responsibility. Mr. Carter echoed that the County will not be responsible for the corrective action. Mr. Harvey asked for the name of Mr. Enders' provider, and said he believes that provider is trying to get out of it. Ms. Rorrer said she believes they service month to month and their only obligation was to pay the amortization off. Mr. Harvey noted that in Mr. Enders' case, there is none. Mr. Enders stated it's his understanding that CVEC won't take the current customers. Mr. Harvey noted they're trying to get out and get the new stuff first. He said they're trying to shoot to larger pockets, and added that there are trucks over his way now that are getting ready.

Mr. Strong asked if Ms. Rorrer knows how much cable buried is not traceable. Ms. Rorrer stated there is very little and noted as far as she remembers, that cable was used for the installations of approximately 10 or 15 customers in the early installs. She believes at that point, Mr. Beam was unable to obtain the cable with the tracer wire. Mr. Strong noted the inventory needs to be made clear where that cable exists because if CVEC or their subsidiary becomes responsible for it and it cannot be found for any excavation problem, they'll have to deal with it. Mr. Harvey stated it would be easy for them to just go to a pole and run it back in those cases, but he doesn't think they'll do it if everything is working. Mr. Bruguere noted his brother had a problem whereas misutility could not find the cable. The only thing preventing them from cutting the fiber cable was the orange tape on top of it. Ms. Rorrer asked if this was along 151, and Mr. Bruguere confirmed. She noted all that fiber is definitely locatable, and Mr. Harvey added that it is in conduit. Mr. Strong stated there is fiber along 151 that has to come from a junction box a certain distance before it goes up a driveway or some other access, and he said perhaps that is what was going on in Mr. Bruguere's situation. Mr. Harvey stated Mr. Beam's crew is the one to locate the fiber, and they would have located it if they were notified. He added misutility is not the one to do that.

Mr. Rutherford asked if CVEC in the transfer is indemnifying themselves to all current and future maintenance problems. Mr. Carter stated that is the mission. Mr. Harvey noted that CVEC will own it, and Mr. Rutherford stated we could still be held responsible for something like negligence in the past that they were not aware of. Mr. Strong cited errors in inventory as an example. Mr. Carter noted he is not sure they will indemnify the County, but they will accept responsibility for any corrective actions or repairs that need to be done. Mr. Saunders stated that it's his understanding that once the transfer is done, the County is out of it and we will not have anything to do with it.

B. Treasurer's Report

Ms. McGarry reported the following:

BROADBAND FUND OPERATIONS @ 12/31/2018

Beginning Balance 7/1/2018	\$192,666.56
July-December 2018 Expenditures	(\$148,374.84)

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July-December 2018 Revenues	<u>\$246,384.15</u>
Subtotal	\$290,675.87
General Fund Transfer 7/1/2018	\$100,000.00
Available Bank Balance 12/31/2018	\$390,675.87

Ms. McGarry noted the total of the open invoices aging report is \$123,608.18. Mr. Harvey asked what we are doing about those. Ms. McGarry said we are currently trying to work with one of the companies that has the most outstanding balances. She added that we have also spoken with the Treasurer about potential things she might be able to do to recoup some of those funds. Mr. Carter noted that he spoke with Mr. Payne this morning who will be taking a closer look at that as well. He added that we did receive information from the service provider who has the largest outstanding balance; they've given us their information on credits that they believe are due to them, so we will have to adjust for those things or confirm what they're saying vs. what we've said. He said there's potentially about \$10,000 that needs to be addressed one way or another, but their outstanding balance is about \$80,000. He stated as Candy said, we will work with the Treasurer if we can't get this resolved with each of the service providers as well as the County Attorney. He added that another option is to give the service providers notice and shut them down, but hopefully it won't come to that.

Mr. Harvey asked how much of it is true money. Mr. Carter stated about \$123,000 is what we think. Mr. Harvey mentioned how it seems discrepancies have been going on for a while and said we need to get that cleaned up. Ms. McGarry said we have gotten a lot of it cleaned up but as Mr. Carter said, one company has the majority of the outstanding balances and we're trying to resolve the issues there. Mr. Carter noted that we probably should have said possible adjustments instead of possible credits because we would have to confirm if it's a really credit or not to the outstanding balance. He added that the financial officer for the company has emailed us through WideOpen Networks, our network operator, that information, and Ms. Rorrer's office is taking a look at it.

Mr. Harvey asked about one of the open invoices on the report and asked why they are on the report if they are not a provider. Mr. Carter stated that the customer still owes us for installation or still has an obligation for installations that haven't been paid. Mr. Harvey noted that if you turned the switch on them, they would be very anxious to pay up quickly. He asked if the first person on the report is an individual or a company, and Ms. Rorrer stated it's an upfront payment for installation in the Horizon Village. Mr. Strong stated that during negotiation on that village, those people decided that it would make their property more sellable if they had fiber share in the community. Mr. Carter noted that this was the individual's share of the build into the neighborhood, but the individual has not gone ahead and gotten service. Mr. Harvey asked if they have a house, and Mr. Carter said he is not sure, but he understands they don't have a connection.

Ms. McGarry noted there are several charges on the report where the age on the account is 30 days or less, so some are within their 30 day payment window. They're not quite considered aged invoices, but just open and current.

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Mr. Saunders asked if we charge interest or late fees. Mr. Carter stated that we haven't been, but that will be considered if we don't get closure on these things. Mr. Harvey said hopefully we won't be in that business long enough. Mr. Saunders stated we still need to collect that money regardless.

Mr. Rutherford asked if CVEC will be receiving our accounts receivable in the transfer. Mr. Carter stated that to date, our position is the County retains any outstanding accounts and any amortization that we collect and not the Co-op. He added there is not really a workable arrangement for that that's really in the Co-op's best interest, but they've been open to discuss it with us. Mr. Carter said a final decision would be up to the Board of Supervisors and the Authority Board to make that decision.

Mr. Saunders referenced one of the accounts on the aging report as being delinquent back to 2016. Mr. Harvey suggested getting judgments on these and getting them tied to the property, especially if they're for installations. Mr. Strong noted this referenced customer was someone who wanted to live in Horizons Village and had planned to build a home and had the driveway installed. The Atlantic Coast Pipeline would come down that property line and they decided they did not want to live there. At that point, they had not yet paid that amount to the County. He said that if it falls on the community, the community will establish a lien on the property for that amount. Mr. Harvey stated it's much cleaner if the County gets a judgment against them and it's tied to the property and it's good for 10-20 years. Mr. Rutherford noted you could just do a mechanic's lien since it's contract related. Mr. Carter said we would attach it to the property.

Mr. Saunders noted that with some of the substantial amounts owed, adding a late charge and interest would get some attention and said we should probably look into that. Mr. Carter said we've discussed that at length as well.

C. County Administrator's Report

Mr. Carter provided the following update:

Mr. Carter noted the work with CVEC continues and County staff is meeting with them every week on Tuesdays at 9 am. He thinks we're getting very close to moving forward with completing what will be the submittal to NTIA and the work that would enable the transfer of the network. He added that Mr. Payne indicated last week that seemingly by mid-February, we should be there and hopefully sooner. He said our goal is to get there as quickly as possible. He noted that Ms. Rorrer and Mr. Crane met this morning with the Co-op and CVSI/Firefly staff and we think we're very close.

He added that with concerns expressed about Mr. Payne representing both the County, the Authority and Central Virginia, he's become uncomfortable with that and thinks it's in the best interest to step aside. Mr. Payne submitted a letter for the Board to take a look at and hopefully approve. Mr. Carter stated he spoke with another firm this morning who is based in Richmond and has broadband experience, and they're open to assist the County, and we'd have to work out the arrangements. He added it's unfortunate but probably in the best interest of moving forward with this transfer that Mr. Payne does continue to work for the County of course, but not be engaged in completing this network transfer.

Mr. Strong referenced a letter he wrote and wanted to enter something into the record. He noted he has extensive experience in both receiving and dispersing federal funds. He read an excerpt from the Office of the Inspector General in the Department of Justice: "Grantees are required to use federal funds in the best

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interest of their program, and these decisions must be free of undisclosed personal or organizational conflicts of interest both in appearance and fact.” He stated this is an appearance issue, and from his experience, if it isn’t addressed, the federal government can demand repayment in full of the grant, and we do not want that to happen. He noted it would be a horrible penalty to the County and he believes the citizens would suffer greatly.

Mr. Carter stated he thinks in appearance only, Mr. Payne has been very upfront about all of this, and we don’t think he has a conflict, but it’s in the best interest of the County, the Authority, and the Co-op. He added that the Co-op will also discontinue using Mr. Payne, and no one wants this transfer to fail, including Mr. Payne.

Mr. Rutherford noted the importance of transparency in a government perspective. He said it’s important that if there is an appearance of any form of conflict, that it gets brought before the board. He added he thinks this is the healthiest route and is happy to see Mr. Payne still a part of Nelson County. He echoed the importance of transparency and undisclosed conflicts of interest. Mr. Carter noted Mr. Payne did disclose it so he wasn’t sure if it would be labeled undisclosed. He added the matter is primarily for the Board to consent to releasing Mr. Payne from working on this project. Mr. Rutherford noted the importance of not having a similar situation of undisclosed representation in the future, as he does not recall that disclosure. Mr. Harvey stated that Mr. Rutherford is wrong in that fact and added that Mr. Rutherford needs to disclose his own conflicts of interest.

Mr. Carter stated that as Mr. Payne has indicated, the Board needs to recognize or agree that Mr. Payne will step aside. Mr. Harvey moved to accept Mr. Payne’s letter, and Mr. Rutherford seconded the motion. There being no further discussion, Members voted (4-1) by roll call vote to approve the motion with Mr. Bruguire voting No.

VI. Other Business (As May Be Presented)

There was no other business considered by the Authority.

VII. Adjournment

At 1:38 PM, Mr. Harvey moved to adjourn and Mr. Rutherford seconded the motion. There being no further discussion, Members voted unanimously by voice vote to approve the motion and the meeting adjourned.