

A regular meeting of the Albemarle County Broadband Authority was held on July 28, 2021. The meeting was held electronically using Zoom and telephone starting at 5:00 p.m.

PRESENT AND ATTENDING REMOTELY: Mr. Bucky Walsh, Mr. Waldo Jaquith, Ms. Liz Palmer, Mr. Bill Fritz

ABSENT: Mr. Trevor Henry, Ms. Donna Price

Also Present: Mr. Richard DeLoria (Senior Assistant County Attorney), Mr. Mike Culp (ABBA, Chief Administrative Officer), Robert Rejonis (Albemarle County Public Schools), John Norrin (Broadband Office)

Agenda Item No. 1. Establish Quorum and Call to Order.

Mr. Walsh established a quorum and called the meeting to order.

Mr. DeLoria announced the following for the record:

Everyone on the phone and attending via Zoom from the public is in listen only mode. During public comment period - please enter your comment in the Chat and it will be read into the record. Include your full name and the magisterial district in which you reside, if you don't know your magisterial district please provide a general location or your home/business street address. We will run through the chat comments first and then take comments by phone. For those on the phone, please use *9 to indicate you'd like to make a public comment. We will ask you to provide your full name and magisterial district or general location of your home or business and then allow up to 3 minutes for your comment.

Because of the continuation of the COVID-19 pandemic and the limitations on group gatherings imposed by the Governor's Executive Orders, this meeting is being held by electronic communication means on the Zoom platform. It is authorized by the County's April 15th, June 17th, and September 2nd Continuity of Government Ordinances, this Authority's Resolution of April 22nd, and the Virginia statute signed into law on April 24th permitting this Authority to meet electronically to discuss and transact business necessary to continue its operations.

The public has real time audio-visual access to this meeting over Zoom and real time audio access over telephone, both as provided in the lawfully posted meeting notice. The public is always invited to send questions, comments, and suggestions to the Authority through the County's Information Technology. This meeting is being recorded and will be made available on the County's website. With that explanation, I ask the board members attending to identify themselves and their current location in general terms.

Mr. DeLoria requested that each member and officer identify the location from where they were attending the meeting.

Mr. Walsh stated he was attending from his home.

Mr. Jaquith stated he was attending from his home.

Ms. Palmer stated she was attending from Athens, Georgia.

Mr. Fritz stated he was attending from his home.

Agenda Item No. 2 Approval of Agenda

Mr. Jaquith requested that a closed session be added as item 7b.

Ms. Palmer **moved** to approve the amended agenda.

Mr. Walsh **seconded** the motion.

The motion was **approved** unanimously.

Agenda Item No. 3 Brief Announcements from the Board

Mr. Walsh stated that the August meeting is the annual meeting. Mr. Walsh noted that this meeting will include the election of new officers and that all positions are open for nominations. Mr. Walsh stated that this meeting is the time to discuss and adopt any amended ABBA procedures.

Agenda Item No. 4 Public Comment

Mr. Kelly from CenturyLink read the following comments which had previously been emailed to the Board:

First, let me say thank you for the opportunity to submit comments. CenturyLink, along with Albemarle County and the Albemarle Broadband Authority's leadership, fully recognizes the importance of broadband, which has been the case here well before the COVID pandemic. Second, my comments today are meant to highlight concerns regarding recent actions made by the Albemarle Broadband Authority (ABBA) Board.

On July 19th I received a call and an email from Mike Culp informing CenturyLink that ABBA is directing the County's Broadband Office to concentrate its efforts on the 10-county regional application for VATI 2022. As a result of this decision, my concern is that no other applicant effectively can be considered for partnerships with ABBA. This concern exists for CenturyLink because of CenturyLink's work to develop a regional project with Albemarle and Greene Counties. I questioned Mike as to why ABBA was making such a decision before seeing the proposals from CVEC, CenturyLink, and any other interested provider.

From CenturyLink's standpoint, it seems foolish to make a decision to support one regional project over another before knowing the numbers behind both projects. It is not in the public interest for ABBA to pick winners prematurely and without all bids. I believe the call ended with Mike Culp offering to speak to others to see about having a combined call with Bucky Walsh and Trevor Henry to discuss the issue and the request that ABBA submit a Notice separate from the PDC notice to keep all options on the table.

After that call, I spoke with Greene County to make sure they were still on board with CenturyLink developing a project for their review. They were fully committed and have submitted a Notice of Application to DHCD. My understanding is that the Notice of Application did not include a company name, but that by doing so, all doors remain open for Greene County to submit a grant application.

On July 27th Mike, Bucky and I finally discussed the issue. The issue remains unresolved. Bucky and Mike decided to focus on the regional application due to their perceived optics of also submitting a single county application. However, as for their optics claim, I would think DHCD would be supportive of ABBA making sure they select the best solution for their county and are able to submit an application in the event that one project does not come to fruition.

Lastly, I leave you with the questions I had asked Mike and Bucky earlier today so that you may consider them as you review these concerns:

1. What is the reason for stopping CenturyLink, and possibly other providers, from developing a solution to ensure Albemarle County is supporting the best broadband solution for its residents?
 - a. It is entirely possible CVEC could come back requesting \$15M from Albemarle County and CenturyLink was proposing needing \$2M, but you ended the procurement discussion last week, so you are now stuck with their solution.
 - b. It is also possible that CVEC comes back and says they need \$50M combined from all 10 counties; Albemarle is sitting on a pot of \$20M, but the other 9 counties are mostly in the \$3 million to 5 million range so what happens if they cannot contribute at the level needed to make it happen? Will ABBA recommend subsidizing the other counties as well to ensure the project does not fall flat?
2. Virginia procurement laws are in place to ensure: “all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded” (Virginia code 2.2-4300). How can ABBA tell CenturyLink that they are refusing to submit a Notice while supporting the Notice of the PDC without a fair and impartial procurement process?
3. What is ABBA going to do if CVEC is either not able to develop a 10-county project, Dominion cannot get SCC approval to raise electric rates for their customers to subsidize the building of fiber optic cabling, the 10 counties collectively cannot reach an agreement, the CVEC project does not meet the definition of universal broadband, or any of the other risks that could prevent their project from coming to fruition?
4. The MOU states Firefly will “prepare a preliminary financial analysis for the Project within each Participating County.” – has that happened?

- a. Gary Wood’s team setup a call with me four weeks ago and wanted me to provide CenturyLink network maps, or starting and stopping points, of where our 25x3 service started and stopped. I mentioned that our Consumer team may have issues with that as we are exploring a grant in at least one of the counties. He tried to say that this was an exclusive deal in the MOU, and when I pushed back saying it is my understanding that the MOU was for them to develop a plan but that it was not an exclusive deal, and he did backtrack some that it was not meant to be exclusive.
5. I listened to the April ABBA Board meeting again last night. There was no discussion that the MOU would prevent ABBA from entertaining proposals from other companies. Was this known at this time, did the ABBA members read/understand this provision?
 - a. From the MOU: “Each Participating County 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 to the Initiative, and that it will devote its broadband- related attention and resources to the Initiative.”
6. One of the Goals & Principles of the Albemarle Broadband Authority is “ABBA will not establish preferred provider relationships”. Please explain how an MOU signed without any procurement, and is then the basis for telling other providers they are not interested in seeing a proposal, which may or may not be a better solution for your constituents, is not establishing a preferred provider relationship?
7. I forgot to ask this during the call, but thought it was important to share. The below is from the RFI, and it seems like ABBA is considering the RFI to be a competitive solicitation and awarding CVEC the only opportunity to put together a VATI 2022 proposal.
 - a. In the event that sufficient information is received, the County may, but is not required to, issue a competitive solicitation. This RFI is not a competitive solicitation and no contract award shall result. This RFI will not be used to evaluate, rank or select ISPs, nor will it be used to pre-qualify or screen ISPs for a subsequent competitive solicitation process, if any. If a subsequent competitive solicitation is issued, the County is under no obligation to advise any ISP responding to this RFI. ISPs are advised to monitor the County’s website for any such opportunities, which will be open to all ISPs regardless of whether or not a response to this RFI has been submitted.
8. What was the purpose of issuing an RFI if ABBA feels like the MOU is restricting ABBA from seeing the plans of any other provider?

Thank you again for taking the time to hear our comments today. I respectfully request that ABBA reconsider its decision and submit a Notice of Application on July 27th without naming any provider to keep the doors open for the best solution for the families that you represent.

Lastly, I want to be clear that CenturyLink values the partnership that we have with ABBA as part of VATI 2020 and VATI 2021. CenturyLink will continue to work towards executing on all of the obligations as part of those projects.

Agenda Item No. 5 Approval of June 23, 2021 and July 14, 2021 minutes

Mr. Walsh **moved** to approve the minutes.

Ms. Palmer **seconded** the motion.

The motion was **approved** unanimously.

Agenda Item No. 6 Old Business

Agenda Item No. 6a VATI 2020 Update

Mr. Culp stated that all 8 areas are activated and signing up customers. Mr. Culp noted that an invoice for the completed work has been received and is being processed.

Mr. Fritz asked how many people have received service to date from the 2020 project.

Mr. Kelly stated that there are 208 new customers have received service and another 50 are waiting for connection.

Agenda Item No. 6b VATI 2021 Update

Mr. Culp stated that he is working to finalize the contract documents with DHCD, CenturyLink and ABBA. Mr. Culp noted that work has continued on the project despite the contract documents not being in place yet. Mr. Culp stated that he believed the documents would be signed by next week.

Agenda Item No. 6c VATI 2022 Planning

Mr. Culp stated that the Thomas Jefferson Planning District Commission (TJPDC) has been designated as the co-applicant. The TJPDC is the lead because the project is a regional effort.

Mr. Gary Wood (Central Virginia Electric Cooperative) stated that work is continuing to finalize the map of the unserved areas. Mr. Wood noted that preliminary designs are being prepared and may be available in August.

Mr. Wood stated that a new group called the Broadband Cooperative Group met last week and the Governor assured the group that the budget will include support for broadband.

Mr. Wood noted that the VATI 2022 grant application is still being prepared and proposes 2,500 feet drop as the free connection distance for customers.

Ms. Palmer asked how partial funding works if the VATI 2022 application is not fully funded.

Mr. Wood stated that DHCD has been asked this question. Mr. Wood stated that his understanding is they DHCD wants to fully fund projects. Mr. Wood noted that the request is for a 36 month build out. If the project is partly funded there would be time for additional grant applications.

Ms. Palmer asked how Dominion Power's involvement enters into the project.

Mr. Wood stated that the SCC needs to give rate approval and that Dominion has been moving forward and covering the cost until such time as the SCC approves a rate change. Mr. Wood noted that the timeline for the project may be impacted if the SCC takes a long time to act on the rate change.

Agenda Item No. 6d ABBA Financial Report (appendix A)

Mr. Culp discussed the financial report (attached to these minutes). Mr. Culp noted that the 2020 and 2021 payments are anticipated as well as \$3 million in funding from the Board of Supervisors.

Agenda Item No. 7 New Business

Agenda Item No.7a Approval of 2nd Quarter Calendar Year 2021 ABBA Report to the Board of Supervisors

Mr. Culp stated that he had distributed the proposed report to the Board members and only clerical or typographical changes were identified.

Mr. Walsh **moved** to approve the 2nd Quarter Calendar Year 2021 ABBA Report to the Board of Supervisors

Ms. Palmer **seconded** the motion.

The motion was **approved** unanimously.

Agenda Item No. 7b Closed Session

Mr. Walsh **moved** that the Albemarle County Broadband Authority go into a closed meeting as authorized by the Virginia Freedom of Information Act, section 2.2-3711(A) of the Code of Virginia under:

- Subsection 7 to consult with legal counsel and receive briefings from staff members or consultants pertaining to actual or probable litigation where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of this public body; and
- Subsection 8 to consult with legal counsel employed or retained by ABBA regarding specific legal matters requiring the provision of legal advice by such counsel; and

- Subsection 29 to discuss and consider the award of a public contract involving the expenditure of public funds and discussion of the terms or scope of such contract where discussion in an open session would adversely affect the Authority’s bargaining position or negotiating strategy. Specifically, the Authority will discuss and consider its 2021 VATI contracts with the Virginia Department of Housing and Community Development and with CenturyLink and the VATI 2022 grant.

Mr. Jaquith **seconded** the motion.

The motion was **approved** by the following roll call vote.

	<u>Yes</u>	<u>No</u>	
Dir. Walsh	<u>X</u>	___	
Dir. Jaquith	<u>X</u>	___	
Dir. Fritz	<u>X</u>	___	
Dir. Henry	___	___	Absent
Dir. Palmer	<u>X</u>	___	
Dir. Price	___	___	Absent

The Board went into closed session.

The Board came out of closed session.

Ms. Palmer **moved** that the Broadband Authority certify by recorded vote that to the best of each Director’s knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the Closed Meeting were heard, discussed, or considered in the Closed Meeting.

Mr. Walsh **seconded** the motion.

The motion was **approved** by the following roll call vote.

	<u>Yes</u>	<u>No</u>	
Dir. Walsh	<u>X</u>	___	
Dir. Jaquith	<u>X</u>	___	
Dir. Fritz	<u>X</u>	___	
Dir. Henry	___	___	Absent

Dir. Palmer	<u> X </u>	<u> </u>	
Dir. Price	<u> </u>	<u> </u>	Absent

Agenda Item No. 8 Adjourn

Ms. Palmer **moved** to adjourn the meeting.

Ms. Walsh **seconded** the motion.

The motion was **approved** unanimously.

The meeting adjourned at 6:29 p.m.

4-4300-91097-491097-950030-9999 (EXPENSE CODE)**BROADBAND INCENTIVES**

	Fund Balance	Commitment/ Projected Expenses	Paid Expenses	Remaining Project Funds	
Initial FY21 Balance (includes deposit of VATI 2019 award and reappropriation of unspent FY20 funds to FY21)	\$1,306,415.16				
VATI 2019 Project at Midway Commitment (PO 2021-7298 CVEC)		\$0.00	\$373,248.00	\$0.00	PROJECT CLOSED OUT AND PAYMENT MADE
	\$933,167.16				
VATI 2020 Project at 8 locations Commitment (PO 2021-7747 CenturyLink)		\$291,300.00	\$0.00	\$291,300.00	*CenturyLink Invoice Received and not yet paid
	\$641,867.16				
VATI 2021 Project \$640,000 Commitment (in process, with CenturyLink)		\$640,000.00	\$0.00		
	\$1,867.16	\$931,300.00	\$373,248.00	\$1,867.16	
Appropriation of \$3,715.00 PT Wages and \$285.00 FICA moved to 950030 Broadband Incentives on 11/4/2020.					
<p>On July 7, 2021 the Board of Supervisors appropriated \$21,236,071.00 in Federal ARPA Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) funds to Albemarle County general government. This Federal funding has specific guidelines for use relating to economic recovery from the COVID-19 Pandemic. Funds are anticipated to be utilized for necessary ARPA CSLFRF eligible expenses related to human and community services, economic development, broadband, and general County projects. Of the total amount, \$3,000,000.00 is recommended to be provided to the Albemarle Broadband Authority (ABBA) for projects that support ARPA objectives and meet minimum guidelines pursuant to the Board's direction at its June 16, 2021 meeting. These funds will be available in August 2021. The County serves as the fiscal agent for ABBA.</p>					