



COMMITTEE MEETING MINUTES

BROADBAND COMMITTEE

March 28, 2022

Christine Husom	District 1
Darek Vetsch	District 2
Mark Daleiden	District 3
Mary Wetter	District 4
Michael Kaczmarek	District 5

DATE APPROVED: [DATE]

Members Present: Darek Vetsch, Mark Daleiden, Lee Kelly, Matthew Fomby, Elizabeth Karels, John Holler, Mark Kellogg (remote)
Members Absent: Lindsey Meyer, Heather Lemieux, Greg Kryzer
Others Present: Zack Breyen, Greg Pickard; (Remote): Alissa Harrington, Virgil Hawkins, Chad Hausmann

THESE MINUTES ARE IN DRAFT FORMAT AND REQUIRE APPROVAL BY THE COUNTY BOARD

I. Franchise Agreements

Alissa Harrington, an attorney for Flaherty & Hood, provided an explanation of the process used in the creation of franchise agreements with local jurisdictions and Internet Service Providers (ISPs) and why franchise agreements matter in terms of cable providers. Harrington provided her professional background, which included working for the Minnesota House of Representatives for five years as a conduit between the Legislature and ISPs and her current role working with counties and cities with Flaherty & Hood.

Harrington said almost all communication involves broadband/internet accessibility since most communication is done via computers and smart phones. It has been a challenge since the outset of digital communication to get access to rural communities and underserved populations. She said there is a significant amount of money available at both the state and federal level to assist in getting broadband accessibility to unserved and underserved areas and the levels to which ISPs are regulated at the federal, state and local levels. Harrington one of the primary issues about regulations is that the law tends to lag behind technological growth and there is a gap between them that can be a hurdle for new technology.

Communications Specialist John Holler asked Harrington if the federal and state grant programs that have been the topic of discussion for years and heightened with the adoption of the American Rescue Plan (ARP) and the Build Back Better legislation are actually pots of money that can currently be accessed. Harrington said that federal program dollars are not yet accessible because updates needed to be made to the Federal Telecommunications Act to address the issues specific to the new funding programs. The Minnesota Office of Broadband does not have a current Request for Proposal (RFP) out for the Border-to-Border program, but expects one soon. The scoring criteria for grants have been put out, but are awaiting approval from the Federal Treasury before opening the grant application window. Commissioner Mark Daleiden said a hearing was scheduled at the State Legislature Wednesday, March 30 to discuss two separate broadband-related bills which could have an impact on how the county moves forward with its own projects.

Harrington said the process for grant programs is complicated. Telecommunications are regulated at the federal level by the Federal Communications Commission (FCC). The United States Department of Agriculture (USDA) provides funding for some of the programs, especially those in rural areas. In addition to federal rules, the FCC allow states to have some regulation of cable and broadband. In Minnesota, the Public Utilities Commission (PUC) that provides information on the franchises and Department of Employment and Economic Development (DEED) that runs the Border-to-Border program and provides the funding source. In all there are four different government organizations that regulate cable and broadband in Minnesota, which complicates getting broadband programs off the ground and operational.

Harrington said that franchise agreements in Minnesota are in place for cable systems. What isn't included in these franchise agreements are internet provisions for broadband. Municipalities enter into franchise agreements with cable providers and there are a series of rules that come with them. No municipality can issue additional franchise agreements to a provider that is more favorable or less burdensome than existing franchise agreements. Most townships in Wright County don't have franchise agreements in place. Commissioner Darek Vetsch asked if, in situations where there are more than one ISP or cable provider in a municipality, must their franchise agreements be linear. Harrington reiterated that franchise agreement for cable providers must not be more favorable or less burdensome, making the franchise agreements similar to one another. She added the importance of the cable franchise agreements is because many cable companies also serve as ISPs. Harrington said that cable franchise agreements can have an impact on the ability for broadband to be introduced to certain areas because of the restrictions they can create.

Information Technology Director Matthew Fomby asked Harrington if cable as we know it will essentially cease to exist. He said that many ISPs are no longer offering cable, but rather streaming services through the internet. Harrington responded that the law in these matters tends to lag well behind the technology. Fomby said the county should come up with a single "cookie-cutter" franchise agreement moving forward. Vetsch added that the county could make agreeing to a template franchise agreement a requirement to seek funding from the county's ARP funds. Fomby said the logical path to take would be to create a generic franchise agreement, get all the cities and townships together and explain to them that we need to bypass the over-regulation and move forward with one uniform franchise agreement.

Vetsch asked if Harrington had a template franchise agreement in place. She responded that she has begun one, but it still a work in progress that she hopes to complete soon. Vetsch suggested if there was going to be a meeting to explain the franchise agreements, it shouldn't be at a quarterly township meeting where several other topics are being discussed. Instead, it should be a meeting specific to the discussion of franchise agreements where everyone would get the same message at the same time. Vetsch estimated that scheduling a meeting or late-May or June would be the preferred option to conduct an informational meeting. Vetsch added that, by May or June, there will be the opportunity to discuss grants that are already in place and how the current round of project funding is faring. Vetsch added that when the Broadband Committee next meets in late-April, the committee will select a date to conduct an evening meeting with cities and townships and, by that committee meeting, Harrington will have a franchise agreement template document for the committee to review.

RECOMMENDATION: Informational only.

II. County-Owned Infrastructure Recommendations

Project Administrator Elizabeth Karels said there were no recommendations to make at this point. Karels said that she and Business Analyst Zack Breyen met with Finley Engineering to discuss a concept design. Vetsch said the initial usage would be low, which was a known concern in Phase 2 of the process and that running into hurdles for implementation shouldn't come as a shock to anyone because they were anticipated. Karels said a problem has been conflicting information that has been put out. She has been told by one source that ARP funds can be used as matching funds for Border-to-Border grants but hasn't been able to get that confirmed. Vetsch said the best option may be to put moving forward on hold for 60 to 90 days until after the Border-to-Border grant program opens to see how the landscape will change once those funds become available. He added that he would leaning toward creating a Request For Information (RFI) process because it would be the best way to leverage all funding sources. He would like to hold off until June at the earliest to start the RFI process, but, in the interim, staff would have the opportunity to gather information to have ready to present to ISPs when the time is right. Vetsch said his concern is that, if the first and second rounds of grant proposals were put out simultaneously, some might back out of the first round of proposals because they might feel that they would be penalized in the second round if they committed early to the grant proposal process.

Karels said an issue in getting widespread ARP financial support from townships has been a change in what the funds can be used for. Recent changes to the rules of ARP have allowed cities and townships much more latitude in how the funds are spent and many will use the funds for their own projects or buying down township debt than contributing to broadband improvements in their jurisdictions. Daleiden said the county shouldn't expect to get much if any contributions from townships except those in desperate need of upgrading their broadband capability that view it as a top priority.

Vetsch said that he has a concern about the RFI process because the committee might receive six or seven requests without the funding to complete all of them and the decision would have to be made about choosing winners and losers. Karels said the landscape could change very soon when the Border-to-Border program opens. Vetsch said it would be beneficial to hold off until the Border-to-Border grants open to see what projects get funded and use Wright County ARP funds to bridge the gaps. Vetsch said he is concerned that ISPs will "cherry-pick" projects that will be most beneficial to the bottom line of the ISPs while not addressing those rural areas in the most need of funding because it isn't profitable to run a fiber line for one or two homes down a rural road. He also feared that there could be competition among neighboring counties if one is giving ISPs significantly more money than another. Daleiden said that cities and townships will need to be on board with the county's franchise agreement to be successful.

Holler said initially he was under the impression that, with state and federal grant programs available, the county could leverage the \$10 million in ARP funds earmarked for broadband investment to \$15 million or more with the ability to access other grant programs and use county ARP money as matching funds. Karels said the rules for matching funds with other grant programs are unclear and she has heard it both ways whether it be allowable – with some saying using both local and state ARP funds for a broadband project would constitute "double dipping." Vetsch said that the recent changes in regulations of ARP funds have made it more likely that using matching funds for state grants will be allowed, but there are still unknowns as to whether that belief will become the rule. Holler said that experience dealing with CARES Act funding was frustrating because the guidance was constantly changing as to what was and wasn't an allowable use for those funds. He asked if there have been similar policy changes associated with ARP fund uses. Karels said the guidance for ARP funding has been largely finalized but there are still some gray areas with the Border-to-Border grants because its requirements haven't been finalized.

Fomby said county staff has done analysis of the potential projects/programs the county has looked to explore and the problem encountered has been the cost isn't practical to lay fiber lines that will only serve a handful of homes at a very high cost. Fomby said if funds could be used for fixed wireless technology, it will make it much easier and more cost effective for ISPs to utilize the lines in the ground and the best use of these funds should be help those people in need of having an upgrade to their broadband capability in areas currently unserved or underserved. He added that he is convinced that ISPs will go where the money is.

Vetsch asked if the county should explore going for RFIs with fixed wireless because it would bring the most return on investment and reach the most people. Fomby said that eventually almost all communication is going to be wireless, but fiber will still be required. Holler asked to what level the county is at the mercy of ISPs for getting tangible success done. Fomby agreed, saying that dropping fiber will increase the likelihood of ISPs getting involved and the Dig Once policy will also increase the potential for ISPs to utilize the fiber lines put in place by the county because it will be more cost-effective to their financial bottom line.

Vetsch said the Dig Once policy will be of significant benefit for projects like CSAH 39 between Monticello and Hasty because much of Monticello Township and Silver Creek Township are very underserved. Daleiden said that CSAH 39 will be a good test for cooperation with ISPs because existing lines that are privately owned will likely have to be replaced and asked why they couldn't use the same line the county would put in place. Karels said other counties that have tried what Wright County is proposing, have had mixed results and the data has showed some remote rural areas likely won't be able to be significantly upgraded.

Vetsch said there are portions of the county whose only access to the internet is through their phones – and even that is spotty. The goal should be to address those areas of greatest need as opposed to more populated areas that will likely be able to attract ISPs because of their population growth that will make expanding into those areas more profitable for the ISPs. Vetsch asked if the county should send out two RFIs – one for in-ground fiber service and another for fixed wireless to see what response each would generate and which would provide the most value for what would be accomplished in terms of upload and download speed, which is critical to what the county is seeking to accomplish and what is required under ARP regulations. Vetsch said he would leave it up to staff to determine the closing date for receiving RFIs, but would like to see it somewhere between July 1 and July 31.

Vetsch suggested having the next meeting Broadband Committee at 10 a.m. Monday, April 25 to review the franchise agreement documents Harrington will have produced so the committee can do its due diligence, as well as having a framework developed as to the process vetting the RFIs.

RECOMMENDATION: Set the next Broadband Committee meeting for 10 a.m. Monday, April 25.

The meeting adjourned at 11:24 a.m.

Minutes submitted by John Holler, Communications Specialist