

A SPECIAL SESSION WAS HELD BY THE NEW KENT COUNTY BOARD OF SUPERVISORS ON THE 13TH DAY OF DECEMBER IN THE YEAR TWO THOUSAND TWENTY-ONE IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 4:30 P.M.

IN RE: CALL TO ORDER

Chairman Thomas W. Evelyn called the meeting to order.

IN RE: ROLL CALL

Thomas W. Evelyn	Present
C. Thomas Tiller, Jr.	Present
Patricia A. Paige	Present
Ron Stiers	Present
John N. Lockwood	Present

All members were present. Mr. Evelyn welcomed everyone and turned the floor over to County Administrator Rodney Hathaway.

IN RE: BROADBAND PROJECT OVERVIEW

County Administrator Rodney Hathaway noted agendas including talking points to guide discussions had been placed at each Supervisor's seat. He began by providing an update on the County's broadband efforts much of which he noted would be to bring the public up to speed. The County had been working with RiverStreet Networks to develop a broadband plan and design with the goal being to serve every household in the County. The plan had been completed and the total cost had been estimated to be just under \$50 million with the County's portion being just under \$25 million. The remainder of the funding would come from federal grants and private investments. The County had partnered with RiverStreet to submit a VATI (Virginia Telecommunications Initiative) grant application. The VATI grant process had required localities to partner with an internet service provider and RiverStreet had prepared and submitted an application on the County's behalf. He noted that due to the timing for submittals, this process had been somewhat backwards from what he would have preferred. The Governor had utilized federal funding which was mostly CARES (Coronavirus Aid, Relief, and Economic Security) Act funds to put \$733 million in the VATI grant pool. This was much more funding than had ever been available and because this was an opportunity that may never be seen again, New Kent had moved forward with partnering with RiverStreet to submit an application. New Kent had issued an RFP (Request For Proposals) to partner with an internet provider on November 15th and he had spoken with two firms who had expressed an interest in submitting proposals by the December 30th due date. Plans were to review proposals and meet with at least two firms before bringing a recommendation to the Board. Mr. Hathaway reported the RFP had been revised based on feedback from the Board and more specific speeds greater than the federal minimum standards had been included. Although there were many ways to provide highspeed service, the RFP had specifically requested a fiber solution to serve every home.

Mr. Hathaway provided an overview of available funding. The Board had decided to set aside revenue from Colonial Downs specifically for broadband and that funding had not been touched other than the approval of \$4 million for the financing of Quinton Elementary School. The Colonial Downs revenue balance was currently \$13,453,813.84. The Board would also be asked to appropriate ARPA (American Rescue Plan Act) funding to broadband.

Half of the ARPA funding had been received and the other half would be received in 2022 (\$4.2 million total in ARPA). Combined funding would be just over \$17 million. The goal would be \$24 million and, based on revenue projections, the County would be close to that by the end of the fiscal year. The remaining balance would be available early in FY23. After setting aside the necessary funding for broadband, significant revenue would be available to cash fund other capital needs and reduce the need for financing. He stated the County was in a good place financially and he was comfortable in regard to broadband funding.

Mr. Hathaway reported he had received a call from the state Department of Housing and Community Development (DHCD) just moments before this meeting informing him that the New Kent/RiverStreet Networks VATI grant application had not been funded. He had not had an opportunity to speak with RiverStreet but would be contacting them. He also reported he had told DHCD that he would like to schedule time to review New Kent's application and discuss areas where the application had not scored well. He stated this was disappointing but the County did have sufficient funding to move forward. He suggested the federal stimulus bill should produce other funding opportunities and noted he would keep the Board posted as he learned more about the application process and the County's VATI application scoring. Mr. Lockwood stated this was a little more than disappointing and noted the application had been for a little over \$4 million. Mr. Hathaway reported the total application was just under \$9 million with approximately \$3.7 million being requested from VATI and the balance from New Kent and RiverStreet. Mr. Lockwood asked if there was a way to challenge this decision and noted he felt New Kent had done everything that had been requested. The grant application had been structured to dramatically change the way service would be provided in New Kent, the infrastructure would be fiber to the home and the County would be funding a significant portion of the project. He added that with hundreds of millions of dollars flowing through Virginia, it did not make sense that New Kent had been snubbed again. Mr. Hathaway reported he had printed the list of award recipients and noted many had involved universal coverage for localities. These were larger projects covering an entire locality and he noted New Kent had not been given that direction and there had been no indication such applications would be given more consideration. Had this been known, more would have been requested. Mr. Lockwood asked for the size of some of the grant awards. Mr. Hathaway reported many of the awards had been regional requests submitted by Planning District Commissions. Awards included: \$29 million to the Cumberland Plateau Planning District, \$28 million to the Lenowisco Planning District, \$35 million to the Hampton Roads Planning District (\$21 million VATI with \$13 million leveraged from private and local sources) and \$14 million to Hanover County with \$41 million leveraged. He noted Hanover had partnered with All Points Broadband and All Points had been very successful with several applications receiving awards. King William County had also received \$5.4 million and had leveraged \$12 million. Many of the awards had been in the Shenandoah Valley, Southwest Virginia and the Eastern Shore. He would keep the Board posted as he learned more about the scoring and awards.

IN RE: BROADBAND CONTRACTUAL ISSUES

County Administrator Rodney Hathaway noted discussing contractual issues had been the main purpose for this special meeting. The RFP (Request For Proposals) was out and would be due on December 30th and there were a number of items to be considered. The contract would need to describe the ownership of the broadband infrastructure and responsibilities for the maintenance of the system and the provision of services.

OWNERSHIP - He reviewed several options regarding ownership. Much of this would be dependent upon the proposals received and while he was not anticipating any action from the Board, he was seeking some direction. Possible options for ownership included:

Option 1: New Kent County would create a Broadband Authority which would own the infrastructure (fiber optic lines, electronics, easements, and equipment). The Broadband authority would enter into a contract with an Internet Service Provider (ISP) that would be responsible for the maintenance and provision of services.

Option 2: The ISP would own the infrastructure and would be responsible for maintaining the network and providing service to residents. The County could structure an agreement to share revenue from the provision of service and could also include a right of first refusal clause that would give the County the opportunity to purchase the infrastructure in the event it was to be sold. The County could also structure the agreement for the purchase to be for a reduced price taking into consideration the initial investment of the County.

Option 3: The County or Broadband Authority could own a portion or percentage of the infrastructure based on the amount of the County investment. The maintenance and service would be the responsibility of the ISP. If the ISP was to close their business, they could sell their share, but the County's ownership would remain intact. The County may still want a right of first refusal to purchase the ISP's share in the event it was to be sold.

Referencing Option 2, Mr. Hathaway reported he had spoken with RiverStreet regarding a revenue share agreement when they had begun developing a plan for New Kent. He had also approached them about including a right of first refusal in the event they were to sell the network. This would include provisions giving the County credit for its investment toward the purchase. RiverStreet had seemed open to discussing these provisions.

Mr. Lockwood stated he felt everyone knew where he stood and he had been in favor of Option 1 from the beginning. Based on the information provided by the Broadband Advisory Committee, he believed New Kent could provide the service for much less than others were suggesting. He reported the Broadband Advisory Committee's numbers had been reviewed by a consultant and had held up well. He stated the cost always seemed to be greatly inflated so the ISP could claim they had put in a larger share than they actually had. He felt that for a \$25 million investment, the County should have something tangible to show for it and should retain a percentage of ownership equal to the investment. He stated the revenue share of pennies on the dollar offered by RiverStreet had almost been an insult. He didn't care who the provider would be but his only concern was where the County's money would go and what would benefit New Kent County. He noted the Broadband Advisory Committee had suggested a positive cashflow in five years. He also noted RiverStreet was a for profit company and the County should not be paying for their infrastructure. He stated New Kent should get a significant revenue share, not from the users of the service but from RiverStreet's operating expenses and, if the County was going to do something, they should get their money back or retain ownership. He also suggested the option to purchase should be at a fixed price and if the cost was \$50 million and the County had put up \$25 million, \$25 million should buy the remainder. Protecting the community's interests and the County's money was the most important thing to him. Mr. Hathaway asked if he was suggesting Option 3 with an opportunity for RiverStreet to buyout the County's share. Mr. Lockwood confirmed and suggested the ISP could buy back the money the County had invested. He stated this would be the most reasonable and fairest option to consider and stressed the importance of getting a return on its investment. There would be great coverage for the County with fiber to the home but the County would still be putting up cash

for a private entity to own the infrastructure. He again stressed the importance of determining a way for the County to be reimbursed or to retain significant ownership. He noted there were many small broadband companies across the country and if they decided to merge or sell to a larger entity, he didn't want the County to be left holding the bag. He stated it wouldn't be the first time that had happened.

Referencing known broadband authorities, Ms. Paige asked how many had been profitable after five years. She also asked how many companies had entered into agreements such as Mr. Lockwood had described. Mr. Hathaway reported that unfortunately there were not many success stories for authorities across the Commonwealth who had tried to assume the role of Internet Service Providers. He noted the best example would be the Eastern Shore but he was concerned about the lack of coverage in rural areas. They were offering a great product and service in the towns but little progress had been made in harder to serve areas. He noted the Eastern Shore was touted across the state as being one of the more successful authorities. He believed this success was largely due to federal funding to provide service to the NASA – Wallops Island facility as well as a contract to provide service to the Virginia Beach School System. He noted this wasn't much different than what many cable companies were doing by not investing beyond the easy to serve.

Mr. Evelyn stated Board members agreed something had to be done and, for him, all options were still on the table. They would have to wait for the RFPs to be reviewed to see what was offered and then negotiate from there but "time is of the essence." Mr. Hathaway noted he couldn't think of anything good about not getting a grant but on a positive note stated it did mean the County's hands would not be tied to the contract process or waiting for notice to begin spending. As soon as proposals were received, a selection could be made and work could begin. Mr. Evelyn noted agreement with Mr. Lockwood and stated this was a lot of money and the Board was responsible to the tax payers. They needed to be sure they were getting what they were paying for and that it was a good product.

Mr. Lockwood suggested when successful broadband authorities were considered, they also should consider some of the very successful co-ops. He said the state was in a testing period where no one had ever thought there would be this much money available to address broadband. Much of this would not be happening if it had not been for the last couple of years (COVID-19) and the dump of cash from the federal government. He noted some of the co-ops were doing very well and he would put them in the same category as authorities. Mr. Hathaway noted agreement and stated co-ops had led the way in Virginia, had been very progressive in the deployment of fiber and had created models copied across the state. Mr. Lockwood suggested New Kent was a "broadband black hole" and could not get VATI grants, did not have a co-op with which to work and would have to do this on its own.

Ms. Paige stated she liked the negotiating points involved in getting someone into the County to provide broadband and her concern with an authority would be that there would be no opportunity for a "do over" if it wasn't successful. She didn't believe there was a lot of time to keep looking for options but noted Louisa was in the process of establishing a co-op. Once proposals were in, the Board would see what the negotiating ability would be. She also noted that when they talked about what New Kent would get back for their investment, they should consider that they would not get everything back moneywise but the service provided to citizens would be critical. Many businesses had closed offices and staff were working from home so broadband was a necessity. She suggested the Board should consider the negotiating points but not let it be the complete driving force because they needed to keep in mind the importance of serving the citizens. She stated doing a

better job than current providers would be an accomplishment in itself. She also noted interest rates were low and the Board may want to consider a loan as an option.

Mr. Stiers asked if creating an authority would be creating another County entity. Mr. Hathaway indicated it would be a separate entity. Mr. Stiers asked if the people would be paid or volunteers. Mr. Hathaway reported payment was not necessary and the Board could be the authority. Mr. Stiers asked if the County created an authority and owned the system who would respond to customer calls for services and would Board members be expected to do this. Mr. Hathaway reported if the County was the authority and the ISP, it would be necessary to stand up a new utilities department or contract with an ISP for service delivery and maintenance. Mr. Stiers asked if that would be Option 1 or Option 2. Mr. Hathaway noted it was a little of both with service and maintenance both being contracted out to an ISP and whether the decision was to outsource or not, the responsibilities would be different if the County owned the system. Mr. Stiers noted he agreed the County needed to protect the investment and tax payer's money but he did not believe the Board would want to be responsible for the leg work. He felt it would be better to contract out with customers paying the contractor and the County receiving a percentage.

PERFORMANCE – Mr. Hathaway noted the contract would need to be specific in regard to timing for the construction and installation of infrastructure. Provisions for penalties in the event the contractor did not meet its schedule and obligations should also be included. Performance requirements would be negotiated with the contractor.

DELIVERABLES – Deliverables should be clearly established in the contract. Some criteria in the RFP included speeds equal to or exceeding 100 Mbps as well as providing service to every household. Provisions regarding when and how service would be extended to new homes and neighborhoods developed after the initial fiber installation would also be included. Mr. Lockwood suggested it should be a zoning ordinance requirement that a developer would run fiber just as they would any other utility. Mr. Hathaway agreed and noted the County may want to consider ordinances requiring developers of large residential subdivisions to install dark fiber as a part of the project. He noted however that Cox would not connect to dark fiber unless they had done the installation and it would be important to be sure the County worked with a provider who would be open to connecting to fiber installed by someone else. Noting that most ISPs would provide service up to a certain distance from its main line and the user would be responsible for the remaining cost, it would be important to have a clear understanding of that maximum distance. Cox would cover connections up to 300 feet but anything beyond that was the responsibility of the property owner. Mr. Hathaway noted one thing he had liked about RiverStreet was their maximum distance off 1,400 feet was much more than other providers were offering. He suggested the County may also want to consider reserving funding to provide grant opportunities to share some of the cost for extending service beyond the ISP's limit.

OPERATIONS & MAINTENANCE – The County would need a clear understanding of the user registration process, fees, monthly rates and packages. The County would also need to ensure service was offered at affordable rates and may want to consider working with the ISP to develop a program offering reduced rates to low income households. Mr. Hathaway reported Cox was currently providing internet for \$9.99 per month to families with children qualifying for free/reduced school meals. It would also be important for the County to have an understanding of how equipment failures, maintenance and service interruptions would be addressed. He noted that although this would be the ISP's responsibility, residents would often look to the County in such situations.

IN RE: BROADBAND NEXT STEPS

County Administrator Rodney Hathaway reported the next step would be to receive proposals on December 30th. Assistant County Administrator Justin Stauder, IT staff and he would review the proposals. They would also look for someone in the private sector to be involved in the process. He had invited the IT Director for New Kent Schools to participate but had learned that individual had taken a position with another locality. He stated he would find another professional to participate in the review process. Mr. Lockwood stated he would also like to be involved in those meetings. Mr. Evelyn asked County Attorney Brendan Hefty if outside counsel would be needed for the contract. Mr. Hefty stated he did not believe outside counsel would be needed. He suggested the Board should wait to see where the proposals and negotiations go and noted many other localities were involved in this same process and documents would be available for comparison. Many of the essential questions would be answered once the proposals were received and his firm was prepared to negotiate and draft a contract.

Mr. Evelyn asked for confirmation of the proposal due date. Mr. Hathaway reported proposals would be due at 2:00 p.m. on Thursday, December 30th. Mr. Lockwood noted Mr. Hathaway had reported communicating with two companies interested in submitting proposals. He asked if this was in addition to RiverStreet. Mr. Hathaway indicated he had heard from RiverStreet and one other company.

IN RE: OTHER DISCUSSION ITEMS

County Administrator Rodney Hathaway entertained questions. Mr. Stiers noted Mr. Hathaway had stated the County could develop ordinances requiring developers of large subdivisions to install fiber and asked could they also be required to install Virginia Natural Gas lines. Mr. Hathaway indicated he believed that could be done but noted some utility companies were picky about who installed the infrastructure and he did not know what Virginia Natural Gas would require.

IN RE: ANNOUNCEMENT OF UPCOMING MEETINGS/ADJOURNMENT

Mr. Evelyn announced the next regularly scheduled meeting of the Board of Supervisors would be held at 6:00 p.m. on Monday, December 13, 2021 in the Boardroom of the County Administration Building. The Board would also meet for a joint meeting with the Economic Development Authority at 8:30 a.m. on Thursday, December 16, 2021 at the New Kent Visitors and Commerce Center, 7324 Vineyards Parkway, New Kent, VA. There would be no December work session.

Mr. Tiller moved to adjourn. The members were polled:

C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Aye
Ron Stiers	Aye
John N. Lockwood	Aye
Thomas W. Evelyn	Aye

The meeting was adjourned at 5:20 p.m.