

# ROANOKE VALLEY BROADBAND AUTHORITY

P.O. Box 2569, Roanoke, VA 24010  
www.highspeedroanoke.net

## MEMBERS:

Kevin Boggess, City of Salem  
Kathleen Guzi, Botetourt County  
Mike McEvoy, Citizen  
Chris Morrill, City of Roanoke  
Daniel O'Donnell, Roanoke County

## Roanoke Valley Broadband Authority Meeting

Friday, November 21, 2014 at 8:30 a.m.

Roanoke Valley-Alleghany Regional Commission office (Upstairs Conference Room)  
313 Luck Avenue, SW, Roanoke, VA 24016

## AGENDA

1. **Call to Order, Introductions & Roll Call** ..... *Chairman Boggess*
2. **Approval of the October 16, 2014 Minutes, pp. 2-4** ..... *Chairman Boggess*
3. **Treasurer's Report, pp. 5-6** ..... *Olivia Dooley, Treasurer*
  - Financial Report for the Period July 1, 2014 to October 31, 2014
  - Adoption of Proposed 2015 Budget
  - Audit Services RFP Update
  - Discussion of (Draft) Financial Operations Manual (See Attachment #1)
4. **Contract Negotiations with Thompson & Litton** ..... *Chairman Boggess*  
**for Design Engineering and Permitting Work**
5. **Discussion of Network Operations RFP** ..... *Matt Miller*
6. **Presentation by Shentel** ..... *James Funkhouser, Business Development Manager,*  
*Fiber Sales, Shentel*
7. **Adoption of Resolution Concerning "Official Intent to Reimburse** ..... *Mike McEvoy*  
**Expenditures with Proceeds of a Borrowing", pp. 7-9**
8. **Discussion Concerning Engaging Legal Counsel, pp. 10-13** ..... *Mike McEvoy*
9. **Other Business** ..... *Chairman Boggess*
  - Confirm Next Scheduled Meeting Date - Friday, December 19, 2014
10. **Adjournment**

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## **MINUTES**

The October meeting of the Roanoke Valley Broadband Authority was held on Thursday, October 16, 2014 at 8:30 a.m. at the Roanoke Valley-Alleghany Regional Commission office located at 313 Luck Avenue, SW, Roanoke, VA.

### **1. CALL TO ORDER, WELCOME AND ROLL CALL**

Chairman Boggess called the meeting to order at 8:30 a.m. and welcomed those in attendance. Secretary Strickland called the roll and reported that a quorum was present.

Roanoke Valley Broadband Authority: *Present:* Kevin Boggess, City of Salem; Kathleen Guzi, Botetourt County; Mike McEvoy, Citizen; Chris Morrill, City of Roanoke; and Dan O'Donnell, Roanoke County.

### **OTHERS IN ATTENDANCE**

Regional Commission Staff: Olivia Dooley, Treasurer; Matt Miller; Jackie Pace; and Wayne Strickland, Secretary.

Guests: Vonya Alleyne, Cox; Jay Brenchick, Botetourt County Economic Development; Wayne Bowers, Roanoke City Economic Development and Broadband Advisory Committee member; Steve Cronemeyer, Verizon; Sam English, Roanoke Blacksburg Technology Council and Broadband Advisory Committee member; Jud Hofmann, Citizen; Meredith Hundley, Virginia Tech; Margaret Hunter Wade, Cox; Ariel Lev, Co-lab; Granger Macfarlane, Citizen; Roy Mentkow, City of Roanoke; Bob Picchi (via Skype), Blue Ridge Advisory Services Group; Gene Price, Cox; and Sandie Terry, Center for Innovative Technology.

### **2. APPROVAL OF THE SEPTEMBER 19, 2014 MINUTES**

The Minutes of the September 19, 2014 meeting of the Roanoke Valley Broadband Authority were distributed earlier.

#### **Roanoke Valley Broadband Authority Action:**

Upon motion by Mr. Morrill, seconded by Mr. O'Donnell and carried, the Minutes of the September 19, 2014 meeting of the Roanoke Valley Broadband Authority were approved, as distributed.

### 3. **TREASURER'S REPORT**

#### A. **Financial Report (July 1, 2014-September 30, 2014)**

For informational purposes, the Financial Report, for the period July 1, 2014 through September 30, 2014, was previously distributed in the agenda mailing.

#### B. **Adoption of the Proposed 2015 Budget**

Chairman Boggess reported that he is talking with Salem officials concerning securing funding for broadband at this time and asked that action on the budget be delayed until the November meeting.

#### **Roanoke Valley Broadband Authority Action:**

Board members unanimously agreed to delay action on the proposed 2015 Budget until the next scheduled meeting.

#### C. **Audit Services RFP Update**

Olivia Dooley reported that the RFPs for Audit Services for the Roanoke Valley Broadband Authority are due to the staff by 3:00pm on Friday, October 31, 2014.

### 4. **PRESENTATION: "RURAL BROADBAND EXPERIMENTS"**

Sandie Terry, Broadband Program Manager with the Center for Innovative Technology (CIT), updated the Authority on a FCC grant program which is still accepting applications for funding. The FCC has funding available for identified eligible census blocks to support rural broadband 'experiments'. This funding is \$100 million over 10 years and requires both broadband and voice services to the eligible census blocks. The amount available for each eligible census block is an annual amount – to be paid over the next 10 years. The order requires a minimum speed based of 10Mbps down and 1Mbps up with some funding reserved for greater bandwidth delivery and based on category of cost area.

Ms. Terry reported that the original filing date was October 14, 2014 but the FCC will be extending the date (which has not been determined at this time). Additional information is available here. There is a FAQ sheet that may also help answer questions.

The CIT's recommendation is for every Planning District/Regional Commission (that have eligible areas) to speak with their members and to consider having conversations with incumbent providers (cable, DSL, fiber and fixed wireless) to determine who is going to file for this funding to fill the holes. Ms. Terry noted that some incumbent providers are not interested as they would have to make significant investments in their infrastructure to support the minimum. However, she further noted it is worth having the discussion with the providers and not to ignore this opportunity for federal funding to address broadband service gaps. A consortium can file an application but there must be one Eligible Telecommunications Carrier (ETC State Designation) involved --- as the provider must deliver voice services. Ms. Terry stated there is about \$1.5 million available for the Roanoke Valley-Alleghany region. She then outlined how the State is working with existing broadband providers to identify legislative issues which will help improve broadband deployment and availability.

**5. DESIGN, ENGINEERING & PERMITTING RFPs**

*Background:* An RFP was prepared for the design, engineering and permitting of a fiber network with the two alternatives/options (a 61-mile network and a smaller 42-mile network). Eleven proposals were received. The Authority asked Mike McEvoy, Matt Miller and Bob Picchi to serve as the review committee and the score the proposals and report their findings/recommendations to the Broadband Authority.

On behalf of the Review Committee, Bob Picchi stated that they are recommending the firm of Thompson & Litton for the design, engineering and permitting work. Mr. Picchi stated that the figures in the RFPs were in line with the Broadband's Business Plan. Mr. Picchi also stated that now would be a good time to look into legal support for the Broadband Authority. Mr. McEvoy stated he would look into the use of a local legal counsel, and report back at the next meeting.

**Roanoke Valley Broadband Authority Action:**

Board members unanimously agreed to move forward with contract negotiations with Thompson & Litton, for the smaller 42-mile network, contingent upon approval of the 2015 budget at the next meeting.

**6. OTHER BUSINESS/COMMENTS**

- The next meeting date of the Roanoke Valley Broadband Authority is Friday, November 21, 2014 at 8:30 a.m. at the Roanoke Valley-Alleghany Regional Commission office. Tentative items for discussion: (A) resolution to reimburse localities for design and engineering costs upfront to get reimbursed by a VRA loan; (B) proposed FY 2015 Budget; (C) contract with Thompson & Litton; and (D) discussion of legal services.
- Granger Macfarlane stated that if public funds are being used for business connectivity, he feels that residential users should benefit as well. Chairman Boggess stated that by creating an open access ring, it should lower barriers to other companies to deploy more residential connections in the future. Mr. Boggess concluded that residential services are not what the Broadband Authority is focusing on at this time.

Submitted by:

Wayne Strickland  
Secretary to the Roanoke Valley Broadband Authority

ROANOKE VALLEY BROADBAND AUTHORITY  
Financial Report  
July 1 - October 31, 2014

DATE		FOR			BALANCE
7/01/2014		Beginning Balance			17443.04
7/18/2014	Check 097	BRASG Inv #585	10,213.01		7,230.03
8/13/2014	Check 098	BRASG Inv #587	3,499.16		3,730.87
8/14/2014	Deposit	City of Salem		418.50	4,149.37
8/14/2014	Deposit	City of Roanoke		418.50	4,567.87
9/10/2014	Check 0100	Roanoke Times (RFP Cons Ad)	215.73		4,352.14
9/26/2014	Deposit	City of Salem		20,000.00	24,352.14

**Roanoke Valley Broadband Authority BUDGET**  
**Period 07/01/14 to 10/31/14**

<b>Revenues</b>	<b>Budget</b>	<b>Current Month</b>	<b>YTD</b>	<b>Under/Over</b>
Cities of Roanoke/Salem	237,100.00	20,000.00	40,837.00	196,263.00
Counties of Bot/Roanoke	0.00	0.00	0.00	0.00
P/Y Carryover	0.00	0.00	18,280.04	-18,280.04
Total Revenue	237,100.00	20,000.00	59,117.04	177,982.96
<b>Expenses</b>				
Salaries	0.00	0.00	0.00	0.00
Fringe Benefits	0.00	0.00	0.00	0.00
Accounting Package	400.00	0.00	0.00	400.00
Advertising	600.00	183.51	399.24	200.76
Audit	5,000.00	0.00	0.00	5,000.00
Consultants	200,000.00	0.00	0.00	200,000.00
Consultants (BRASG)	30,000.00	10,707.92	24,420.09	5,579.91
Insurance	850.00	0.00	837.00	13.00
Supplies	250.00	0.00	0.00	250.00
Travel	0.00	0.00	0.00	0.00
Indirect Costs	0.00	0.00	0.00	0.00
Total Expenses	237,100.00	10,891.43	25,656.33	211,443.67
<b>Total</b>	<b>0.00</b>	<b>9,108.57</b>	<b>33,460.71</b>	<b>-33,460.71</b>

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## **RESOLUTION OF THE ROANOKE VALLEY BROADBAND AUTHORITY**

### **Official Intent to Reimburse Expenditures with Proceeds of a Borrowing**

WHEREAS, the Roanoke Valley Broadband Authority (the "Authority"), a authority formed and existing under the laws of the Commonwealth of Virginia is authorized and empowered, pursuant to Title 15.2, Chapter 54.1 of the Code of Virginia of 1950, as amended (the "Virginia Wireless Service Authorities Act"), to borrow at such rates of interest as authorized by the general law for authorities and as the Authority may determine and issue its notes, bonds or other obligations to acquire, construct, reconstruct, operate and maintain any system of facilities for provision of qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56; and

WHEREAS, the Authority has determined its intent to reimburse expenditures with proceeds of a borrowing; and

WHEREAS, the Authority intends to acquire, construct and equip the Project described in Exhibit A attached hereto (collectively, the "Project"); and

WHEREAS, plans for the Project have advanced and the Authority has been or contemplates advancing its own funds to pay expenditures and expects to continue advancing its own funds to pay expenditures related to the Project (the "Expenditures") prior to incurring indebtedness and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds or taxable debt, or both;

NOW, THEREFORE, be it resolved by the Board of Directors of the Roanoke Valley Broadband Authority that:

1. The Authority intends to utilize the proceeds of tax-exempt bonds or the Authority's bond given in connection therewith (the "Bonds") or to incur other debt, to pay some or all of the costs of the Project in an amount not currently expected to exceed \$8,200,000.

2. The Authority intends that the proceeds of the Bonds be used to reimburse the Authority for Expenditures with respect to the Project made on or after the date that is no more than 60 days prior to the date of this Resolution. The Authority reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Bonds or other debt.

3. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Authority so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Authority.

4. The Authority intends to make a reimbursement allocation, which is a written allocation by the Authority that evidences the Authority's use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. Periodic requisitions of funds will constitute the Authority's written allocation. The Authority recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction of at least five years.

5. The Authority intends that the adoption of this resolution confirms the "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

6. This resolution shall take effect immediately.

Members Absent \_\_\_\_\_

Votes For \_\_\_\_\_

Votes Against \_\_\_\_\_

Abstentions \_\_\_\_\_

### **CERTIFICATION**

The undersigned clerk of the Board of Directors of the Roanoke Valley Broadband Authority does hereby certify that the foregoing is a true, complete and correct Resolution adopted by a vote of a majority of the members of the Board of Directors of the Roanoke Valley Broadband Authority present at a regular meeting of the Board of Directors of the Roanoke Valley Broadband Authority duly called and held November 21, 2014, at which a quorum was present and acting throughout, and that the same has not been amended or rescinded and is in full force and effect as of the date of this certification, November 21, 2014.

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Secretary, Roanoke Valley Broadband Authority



## **EXHIBIT A**

The Project consists of design, engineering and construction for the design, engineering, permitting, furnishing, installing and testing a metropolitan, suburban, and rural fiber optic telecommunications network in the Roanoke Valley area. The network will be either (1) an approximately 63-mile network with 5 protected rings, or (2) a smaller scale 42-mile network with single ring architecture. The Project will include related landscaping, infrastructure and issuance costs.

October 23, 2014

Roanoke Valley Broadband Authority  
P.O. Box 2569  
Roanoke, VA 24010  
Attention: Mr. Kevin Boggess, Chair

Re: Engagement of Glenn, Feldmann, Darby & Goodlatte

Gentlemen:

We are pleased that you have engaged our law firm to serve as your legal counsel. It is our policy to confirm in writing the nature of the engagement and the terms of our legal representation. If you do not understand all of the terms or language in this engagement agreement, please contact us prior to signing this letter agreement.

**1. Scope of Representation.**

We have been engaged to represent the Roanoke Valley Broadband Authority (the "Authority") for the purpose of (1) advising on technical issues as needed from time to time, (2) assistance on title examination and easement acquisition and (3) service as bond counsel initially on the proposed financing of the initial capital investment in the broadband network.

**2. Other Representation.**

While we may, from time to time, assist in other areas, including general advice on tax matters, we do not represent the officers, manager, staff or directors of the Authority.

**3. Fees.**

Our fees will be earned on an hourly basis using my current standard rate for municipal work of \$225 per hour. Should other attorneys in the firm or our staff become engaged in work on this matter, their rates range from \$250 to \$300 per hour for attorneys and \$80 per hour for legal assistants. We will not require a retainer deposit. We will not render a bill for attorney or staff services until the aggregate total has exceeded 100 hours, at which time we will expect to be paid for our services. We anticipate being paid for bond counsel and other legal services from bond proceeds when and if a bond financing is closed. We are not, however, able to advance out-of-pocket costs for title examinations, filing fees, title premiums or other cash payments made by us for your benefit.

**4. Disbursements and Expenses.**

We may incur various expenses in providing services. Subject to our agreement to delay billing for attorney or staff services as described in Section 3, you agree to pay all such expenses and to reimburse us for all out-of-pocket expenses that we pay on your behalf. Whenever possible, we will forward bills for any expenses incurred on your behalf directly to you and you agree to make prompt, direct payment to the originator of these bills. Expenses that may be incurred include, but are not necessarily limited to, charges for serving and filing papers, courier and messenger services, recording and certifying documents, deposition transcripts, investigations, long-distance telephone calls, facsimile charges, copying charges, travel expense including mileage outside of the Roanoke Valley area, and postage charges.

**5. Bills and Statements.**

After billing for the 100 hours described in Section 3, we will bill you for all services and reimbursable expenses on a monthly basis by email. All amounts billed will then be due upon receipt. If the account is overdue by more than sixty (60) days, we reserve the right to terminate all further services and/or apply to any court for permission to withdraw from any litigation in which we represent you, upon notice to you, or suspend the provision of any further services until the account balance is paid.

**6. Your Right to Terminate Representation.**

You have the right to terminate this representation with or without cause. You must notify us in writing if you want to terminate our representation. When we receive written notice of termination, we will stop all legal work on your behalf immediately. You must promptly pay and reimburse us for all fees, charges, and expenses incurred pursuant to this agreement before the date of the written notice of termination.

**7. Work Papers, Etc.**

All work papers and other materials that we create during our representation are initially our property. However, all of your documents that come into our possession and copies of any of the following documents, as may be applicable, from our firm's file will be provided to you as soon as is reasonable upon its request: lawyer/client and lawyer/third-party communications; our copies of documents you furnished (unless the originals have already been returned to you); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for you in the course of the representation; research materials; and bills previously submitted to you. You will be billed for the costs of copying any such documents and you agree to pay those costs. We have the right to purge all file materials and dispose of all documents after three (3) years have expired after the completion of a matter.

**8. Our Right to Terminate Representation.**

We reserve the right to terminate our representation (to the extent permitted by applicable ethical and court rules) at any time if you breach any material term of this agreement or fail to cooperate or follow our advice on a material matter; if conflict of interest develops or is discovered; or, if there exists at any time any fact or circumstance that would, in our opinion, render our continuing representation unlawful, unethical, or otherwise inappropriate. If we elect to terminate our representation, you will take all steps reasonably necessary and will cooperate as reasonably required to free us of any further obligation to perform legal services, including the execution of any documents necessary to complete our withdrawal from representation. In such case, you agree to pay for all legal services performed and expenses incurred before the termination of our representation in accordance with the provisions of this agreement.

**9. Entire Agreement.**

This agreement constitutes the entire agreement among the parties and may not be modified except in writing signed by us. Kindly sign and return the enclosed copy of this letter in the envelope provided.

**10. Binding Effect.**

This agreement shall be binding upon the parties, their successors and permitted assigns.

**11. Assignment.**

This agreement may not be assigned by either party except with the written consent of the other party, except to the extent that our employment of other attorneys and third parties is expressly contemplated in this agreement.

**12. Controlling Law.**

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia in effect at the time of such construction or enforcement, except Virginia's choice of law statutes and doctrines. You agree that any enforcement of the terms of our representation through litigation may be brought only in Roanoke, Virginia.

Very truly yours,

Harwell M. Darby, Jr.

Roanoke Valley Broadband Authority

October 23, 2014

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[Signature page to engagement letter dated October 15, 2014]

We accept the terms of this Engagement Letter.

Roanoke Valley Broadband Authority

By: \_\_\_\_\_  
Kevin Boggess, Chair