
Agenda

Town of Fairhaven Broadband Study Committee

Date: Jan 14, 2021, 6:00 p.m. E.T.

RECEIVED
TOWN CLERK

2020 DEC 29 P 4: 00

Remote Access Information:

Join Zoom Meeting

<https://zoom.us/j/97501257824?pwd=MmdyUGc0VEFvR2xCK3MxUm1lbnk13QT09>

or call 1-929-205-6099

Meeting ID: 975 0125 7824

Passcode: 209035

FAIRHAVEN,
MASS.

Committee Members:

- Bob Espindola
- Derek Frates
- Sean Powers
- Alyssa Botelho
- Stephanie Garde
- Cathy Melanson
- Devin Cox, EntryPoint Networks
- Jeff Christensen, EntryPoint Networks

Agenda Items:

- Review Minutes from last Meeting
- Review Memo from Richard Manley - Bond Counsel
- Discuss Municipal Light Plan Requirements
 - Discuss Wilbraham Meeting
- Would Fairhaven Want an Internal Department or 3rd Party to Operate a Network?
- Update on Survey Outreach Effort
- Update on total number of survey responses to date
- Discuss RFP for Design / Build - Current State?
- Clarify 2021 Plan
 - Focus on Timeline for Next Six Months
- Other Issues

Next Steps

1. Legal
 - a. Finalize recommendations from the Fairhaven Legal and Outside Bond Counsel regarding the proposed legal structure and supporting legal documents for town owned infrastructure.
 - b. Establish Electric Light Plant Structure.
2. Community Engagement Plan
 - a. Refine Community Engagement Plan.
 - b. Implement Community Engagement and demand aggregation process.
 - c. Select outside resources for the Community Engagement Plan (Marketing, Communication, Public Relations, etc).
3. Network Financing
 - a. Explore network financing options.
 - b. Formalize network financing plan.
4. Design / Build
 - a. Conduct RFP to select Design (Engineering) and Build (Construction) partner(s).
 - b. Create Design/Build Project Plan.
 - c. Create formal design of the network.
 - d. Launch make-ready process for utility pole attachments.
 - e. Construct network.
5. Network Management / Open Access platform
 - a. Conduct RFP to select Network Management / Open Access platform.
6. Project Approval
 - a. Advance initiative to City Council for approval when demand aggregation (Take-Rate) makes the project feasible.

Notes from Prior Meeting

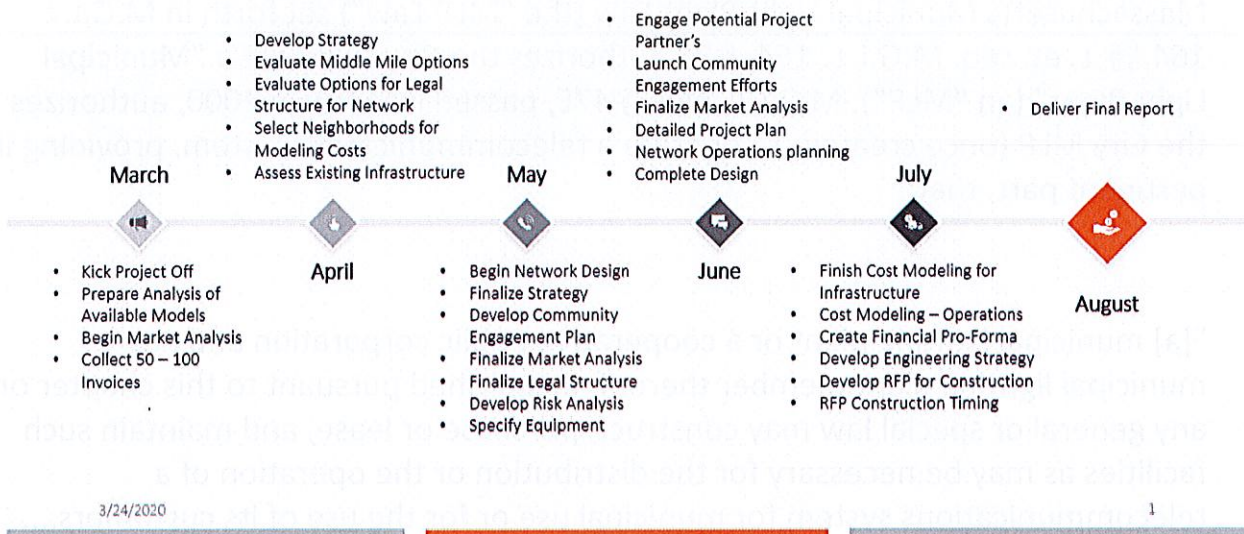
1. Prepare email for Richard Manley regarding Municipal Light Plan (Jeff & Bob)
2. Set up meeting with Wilbraham to discuss Municipal Light Plan (Jeff & Bob)
3. Work with Bond Counsel to prepare information on Municipal Light Plant setup and maintenance.
4. Update data in report from Survey & Invoices (Devin)
5. Forward RFP Template to Committee (Jeff)
6. Get on Agenda for January Select Board Meeting (Bob)
7. Prepare presentation for Select Board (Devin)
8. Set date for January Committee Meeting (Sean & Derek)
9. Build Next Steps into a Timeline (Jeff & Devin)

Scope of Work:

EntryPoint's Consulting Services Group, will work with the Broadband Committee to develop a *Broadband Master Plan* and Feasibility Analysis for the Town of Fairhaven. The contemplated Scope of Work will be performed in coordination with Fairhaven's Broadband Committee and includes the following:

- Develop Broadband Strategy
- Conduct SWOT Analysis
- Assess Existing Broadband Infrastructure
- Conduct Market Analysis
- Prepare Community Engagement Plan & Timeline
- Assist with Early Community Engagement Efforts
- Coordinate Broadband Surveys with Residents and Businesses in Wilbraham
- Prepare Comparison of Municipal Broadband Models
- Prepare a High-level Fiber Optic Network Design and Materials Cost Summary
- Prepare Cost Analysis
 - Prepare Projected Capital Expenditures and Funding
 - Prepare Projected Income and Cash Flow
- Coordinate with Potential Project Partners
 - Middle-Mile
 - Internet Service Providers
 - Engineering
 - Construction
- Assist with Introduction of Potential Financial Partners for a Project
- Coordinate Planning for Financing Options
- Assist with Securing Legal Opinions to Establish Authority to Build Broadband Infrastructure
- Conduct Risk Analysis
- Assist with Preparation of RFP for Engineering & Construction
- Prepare Report Summary and Conclusions

TIMELINE



QUINCY, MA FINDINGS

NO SPECIFIC FEDERAL RESTRICTIONS:

The FCC, an independent federal agency charged with regulating interstate and international communications, has taken an active role in promoting the deployment of broadband services and broadband infrastructure. The FCC has adopted numerous programs and processes to facilitate access to and the adoption of advanced broadband services, including expressing support for broadband voice services. Former FCC Chairman Wheeler has stated on numerous occasions his support for the development of local government based broadband service options and has expressed his opinion that the FCC has the authority to preempt state laws that ban competition by municipal broadband to private providers. The FCC has generally supported municipal broadband projects and does not presently pose an obstacle to the City's development of a plan for municipal broadband.

STATE (MA) AUTHORITY AND RESTRICTIONS:

Massachusetts has not expressly authorized the operation of Municipal Broadband outside the statutory authority granted to municipalities under the Massachusetts Municipal Light Plant Law (the "MLP Law") set forth in M.G.L c. 164 §§ 1, et. seq. M.G.L c. 164, § 35 authorizes the City to create a "Municipal Light Plant" (an "MLP"), M.G.L c. 164, § 47E, passed into law in 2000, authorizes the City MLP (once created) to operate a telecommunication system, providing in pertinent part, that:

"[a] municipal lighting plant or a cooperative public corporation and any municipal lighting plant member thereof, established pursuant to this chapter or any general or special law may construct, purchase or lease, and maintain such facilities as may be necessary for the distribution or the operation of a telecommunications system for municipal use or for the use of its customers.... Wherever apt, the provisions of this chapter and chapter 44, which apply to the operation and maintenance of a municipal lighting plant, shall apply also to the operation and maintenance of such telecommunications system."

It is clear from M.G.L. c. 164, § 47E that any MLP established under M.G.L. c. 164 may construct, purchase or lease and maintain facilities for a telecommunications system, and "wherever apt," the provisions of Chapter 164 and Chapter 44 that "apply to the operation and maintenance" of MLPs, will "apply also to the operation and maintenance of such telecommunications system.". M.G.L. c. 164, § 47E. Thus, the Legislature appears to have contemplated that an MLP might operate a MLP solely for the purposes of providing a telecommunications system and service, including municipal broadband service. Several towns in Western Massachusetts have built their own telecommunications systems by taking the necessary town meeting votes under. M.G.L. c. 164,

§ 36 to form MLPs. It is pursuant to the provisions of M.G.L. c. 164 then, that such MLPs must operate, regardless of the purpose behind their formation. The Supreme Judicial Court (the "SJC") has recognized M.G.L. c. 164 as the primary and, in most instances, exclusive statutory authority governing MLP operations. See, *Municipal Light Commission of Taunton v. City of Taunton*, 323 Mass. 79, 84 (1948); *MacRae v. Concord*, 296 Mass. 394, 397 (1934). It is well-settled that MLPs are "quasi-commercial" entities created by special act; municipalities themselves have no inherent rights to own and operate a business in the absence of special

legislation and the enabling statutes, found at M.G.L. c. 164, §§ 34 et. seq. See, MacRae at 396; Spaulding v. Peabody, 153 Mass. 129, 137 (1891).

M.G.L. c. 164, § 56, provides in pertinent part, that:

RECOMMENDATIONS & NEXT STEPS:

As Massachusetts has not expressly authorized the operation of Municipal Broadband outside the statutory authority granted to municipalities under the MLP Law which authorizes the City to create a Broadband MLP and once created to operate a telecommunication system, it is recommended that the City commence the process of forming an MLP after consulting with a local law firm with MLP “telecommunication systems” experience.

