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# Agenda

## Town of Fairhaven Broadband Study Committee

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Date: NOV 12, 2020, 7:00 p.m. E.T.

### Remote Access Information:

#### Join Zoom Meeting

<https://zoom.us/j/95576828914?pwd=RGN1UVRpZkZXM0tMQWYyRWpqcCtyUT09>

or call 1-929-205-6099

Meeting ID: 955 7682 8914

Passcode: 196994

FAIRHAVEN,  
MASS.

2020 NOV -9 P 4: 14

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TOWN CLERK

### Committee Members:

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

### Agenda Items:

- Review Minutes from last Meeting
- Update on Survey Outreach Effort
- Update on total number of survey responses to date
- Discuss target for survey sample and what we need to do to get there
- Questions on Broadband Report
- Discussion on timeline for advancing a potential project
- Decision Making Framework - what will the committee be asking the Select Board to do?
- RFP vs RFQ vs. Direct Negotiation for Design Build
- Other Issues
- Clarify Next Steps

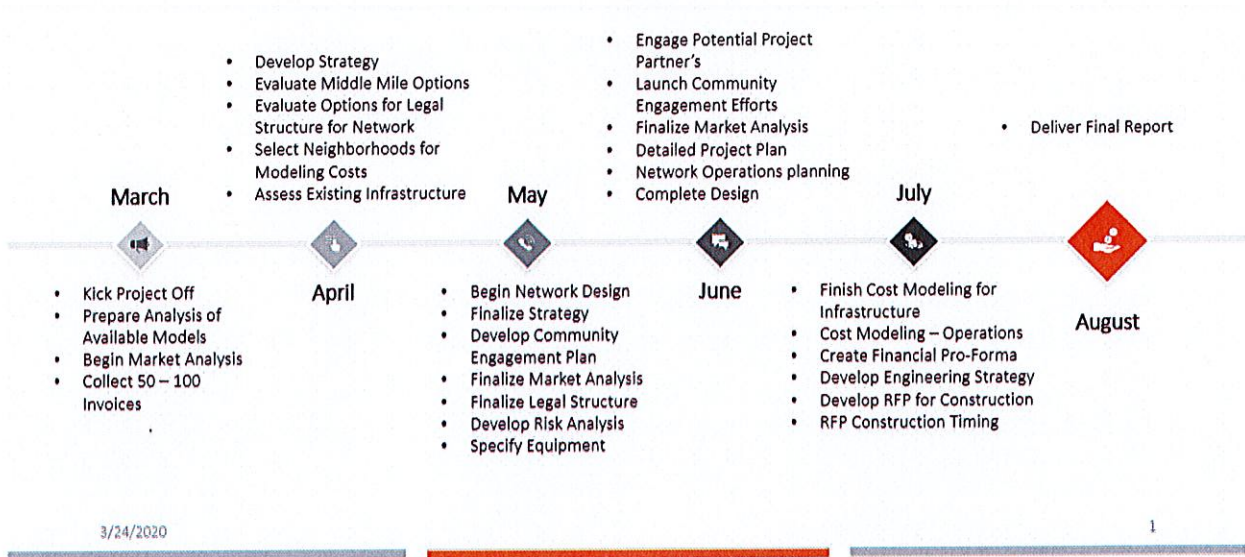
## Scope of Work:

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.