



**FAUQUIER COUNTY BROADBAND AUTHORITY  
WARREN GREEN BUILDING  
10 HOTEL STREET  
WARRENTON, VIRGINIA 20186**

**MINUTES**

***A MEETING OF THE FAUQUIER COUNTY BROADBAND AUTHORITY WAS HELD  
AUGUST 10, 2017 AT 11:00 A.M. IN WARRENTON, VIRGINIA***

**P R E S E N T** Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.; Mr. Paul S. McCulla, County Administrator; Mr. Kevin J. Burke, County Attorney

**A B S E N T** Ms. Mary Leigh McDaniel

**CALL TO ORDER**

Mr. Gerhardt, Chairman Pro Tem, called the meeting to order at 11:04 A.M.

**ADOPTION OF THE AGENDA**

Mr. Butler moved to adopt the agenda as presented. Mr. Trumbo seconded, and the motion carried by a vote of 4-0, as follows:

***Ayes:*** ***Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.***  
***Nays:*** ***None***  
***Absent During Vote:*** ***Ms. Mary Leigh McDaniel***  
***Abstention:*** ***None***

**ELECTION OF THE CHAIRMAN**

Mr. Butler nominated Mr. Richard Gerhardt as Chairman for Calendar Year 2017. Mr. Trumbo seconded and, with no further nominations, Mr. Gerhardt was elected Chairman, as follows:

**Ayes:** *Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.*  
**Nays:** *None*  
**Absent During Vote:** *Ms. Mary Leigh McDaniel*  
**Abstention:** *None*

#### **ELECTION OF THE VICE-CHAIRMAN**

Mr. Gerhardt nominated Ms. Mary Leigh McDaniel as Vice-Chair for Calendar Year 2017. Mr. Butler seconded and, with no further nominations, Ms. McDaniel was elected as Vice-Chairman, as follows:

**Ayes:** *Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.*  
**Nays:** *None*  
**Absent During Vote:** *Ms. Mary Leigh McDaniel*  
**Abstention:** *None*

#### **ADOPTION OF THE BROADBAND AUTHORITY 2017 BYLAWS AND RULES OF PROCEDURE**

Mr. Gerhardt moved to adopt the following 2017 Bylaws and Rules of Procedure, as presented. Mr. Trumbo seconded and, following discussion, the motion carried by a vote of 4-0, as follows:

**Ayes:** *Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.*  
**Nays:** *None*  
**Absent During Vote:** *Ms. Mary Leigh McDaniel*  
**Abstention:** *None*



**BYLAWS OF THE  
FAUQUIER COUNTY BROADBAND AUTHORITY  
A VIRGINIA NONSTOCK CORPORATION**

**ARTICLE 1  
OFFICES**

The principal office of the Fauquier County Broadband Authority (the "Authority") will be located at the office of the County Administrator, Fauquier County, 10 Hotel Street, Warrenton, Virginia. The authority may have such other offices as the Authority Board (the "Authority Board") may determine from time to time.

**ARTICLE 2  
AUTHORITY BOARD**

The Authority Board shall have five (5) members. The members of the Authority Board shall be the members of the Board of Supervisors, whose terms of office shall be concurrent as provided by the Articles of Incorporation of the Authority.

**ARTICLE 3  
GENERAL POWERS AND MEETINGS**

- 3.1 **GENERAL POWERS.** The affairs of the Authority will be managed by the Authority Board, who will conduct its business in public meetings as provided by state law, the Authority's Articles of the Incorporation, and these Bylaws.
- 3.2 **REGULAR MEETINGS.** The Authority Board shall meet when necessary. At its annual meeting, it may also establish a time, place and location for regularly scheduled meetings. The members of the Authority Board may provide, by motion and recorded vote, the time and place for holding additional regular meetings. Additional regular meetings will be held at the principal office of the Authority or at such other place as may be designated by the Authority Board.
- 3.3 **SPECIAL MEETINGS.** Special meetings of the Authority Board may be called by or at the request of the Chairman or any two (2) members and will be held at the principal office of the Authority or at such other place as the members may determine.
- 3.4 **NOTICE OF SPECIAL MEETINGS.** All notices for special meetings shall be in accord with the provisions of the Virginia Freedom of Information Act ("VFOIA") at such time, as well as any other applicable state law.

- 3.5 **QUORUM.** A majority of the members of the Authority Board will constitute a quorum for the transaction of business at any meeting of the Authority Board, but if less than a majority of the members are present at any meeting, then a majority of the members present may adjourn the meeting from time to time without further notice.
- 3.6 **BOARD DECISIONS.** An act of majority of the members of the Authority Board present at a meeting in which a quorum is present will be an act of the Authority, unless the act of a greater number is required by law or by these Bylaws.
- 3.7 **MEETINGS OF AUTHORITY BOARD AND COMMITTEES.** The Authority Board and all committees of the Authority Board are subject to the requirement of the Virginia Freedom of Information Act.

#### **ARTICLE 4 OFFICERS**

- 3.8 **OFFICERS.** The officers of the Authority are a Chairman and a Vice Chairman and such other officers as may be elected in accordance with this Article 4.
- 3.9 **ELECTION AND TERM OF OFFICE.** The officers of the Authority shall be elected annually by the Authority Board at its annual meeting. If the election of officers is not held at the annual meeting, then the election will be held as soon thereafter as is convenient. New officer positions may be created and filled by the Authority Board by amendment to these Bylaws. Each officer will hold office until his successor has been duly elected and qualifies, even if such term of office extends beyond the date of the annual meeting.
- 3.10 **POWERS AND DUTIES OF OFFICERS.**
- A. **Chairman.** The Chairman of the Authority will preside at all meetings of the Authority Board at which he is present. The Chairman also will discharge such other duties as the Authority Board may direct. The Chairman will sign or countersign all instruments that require his signature and will make such reports and perform such other duties incident to his office as required of him by the Authority. Subject to such limitations as the Authority Board may propose, and subject further to the exception of signing or countersigning all instruments that require the Chairman's signature, the duties of the Chairman may be discharged by employees of the Authority except for presiding at meetings of the Authority Board.
  - B. **Vice Chairman.** In the absence or disability of the Chairman, the Vice Chairman will exercise all of the Chairman's responsibilities and functions.
  - C. **Clerk.** The County Administrator shall serve as Clerk to the Authority and may appoint one or more members of County Staff to serve as Deputy Clerk.

**ARTICLE 5  
COMMITTEES**

- 3.11 **COMMITTEES OF AUTHORITY BOARD.** The Authority Board, by a majority vote of the members in office, may designate one (1) or more committees.
- 3.12 **MEMBERSHIP OF COMMITTEES.** The Chairman will appoint the members of the committees of the Authority Board. The Chairman or the Authority Board, as the case may be, will instruct a committee in its duties.

**ARTICLE 6  
CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

- 3.13 **CONTRACTS.** The Authority Board may authorize the Chairman or someone acting in his place or stead, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority which is proper and legal for the Authority to enter into, and the authorization may be general or may be confined to specific instances.
- 3.14 **DEPOSITS, CHECKS, DRAFTS OR ORDERS.** Funds of the Authority shall be deposited in an account of the Fauquier County Treasurer, and disbursed by the Treasurer in the same manner as checks, drafts and orders of the County.
- 3.15 **GIFTS.** The Authority may accept any contribution, gift, bequest, or devise for any purpose of the Authority, unless conditions placed on the contribution, gift, bequest or devise, if any, are contrary to law.

**ARTICLE 7  
BOOKS AND RECORDS**

The Authority's books and records will be audited annually either by the Board of Supervisors or by an independent auditor hired by the Authority. A copy of the annual audit of the Authority's books and records will be made available to each member of the Authority Board immediately after the audit's conclusion.

**ARTICLE 8  
RULES OF ORDER**

The Authority will use Roberts's Rules of Order as a procedural guideline for conducting all business.

**ARTICLE 9  
AMENDMENT OF BYLAWS**

These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the members of the Authority Board present in any regular or special meeting at which a quorum is present.

Adopted this 10th day of August 2017, by the Fauquier County Broadband Authority.

---

Richard R. Gerhardt, Chairman

**A RESOLUTION TO AUTHORIZE THE CHAIRMAN TO SIGN A MEMORANDUM OF UNDERSTANDING TO PROVIDE FOR BROADBAND SERVICE**

Mr. Trumbo moved to adopt the following Resolution. Mr. Granger seconded and, following discussion, the motion carried by a vote of 4-0 as follows:

*Ayes:* **Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.**  
*Nays:* **None**  
*Absent During Vote:* **Ms. Mary Leigh McDaniel**  
*Abstention:* **None**

RESOLUTION

**A RESOLUTION AUTHORIZING THE CHAIRMAN OF THE FAUQUIER COUNTY BROADBAND AUTHORITY TO SIGN A MEMORANDUM OF UNDERSTANDING TO PROVIDE FOR IMPROVED BROADBAND ACCESS**

WHEREAS, the PATH Foundation has proposed to provide a grant of \$50,000 to permit the County and the Fauquier County Broadband Authority, acting through the Economic Development Authority, in order to permit the Economic Authority to provide an incentive grant in the same amount to Waterford Telephone Company to facilitate provision by Waterford of “extended DSL” rural broadband service in the County; and

WHEREAS, the Fauquier County Board of Supervisors, Fauquier County Broadband Authority, and Waterford Telephone Company desire to enter into a Memorandum of Understanding outlining the means through which the Authority shall disburse the grant funds to Waterford and the respective responsibilities of the parties; now, therefore, be it

RESOLVED by the Fauquier County Broadband Authority this 10<sup>th</sup> day of August 2017, That the Chairman of the Economic Development Authority is authorized to sign a Memorandum of Understanding with the PATH Foundation, and is further authorized to sign a Memorandum of Understanding with the Fauquier County Board of Supervisors, Fauquier County Broadband Authority, and Waterford Telephone Company.

**ECONOMIC DEVELOPMENT AUTHORITY  
OF FAUQUIER COUNTY, FAUQUIER COUNTY BROADBAND AUTHORITY AND  
WATERFORD TELEPHONE COMPANY  
EXTENDED DSL  
BROADBAND EXPANSION  
MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING (MOU) made and entered this \_\_\_\_ day of \_\_\_\_\_, 2017, by and among FAUQUIER COUNTY (the “County”), THE FAUQUIER COUNTY BROADBAND AUTHORITY (the “FCBA”) a political subdivision of the Commonwealth of Virginia, WATERFORD TELEPHONE COMPANY (“WATERFORD”) a corporation authorized to transact business in the Commonwealth of Virginia, and the ECONOMIC DEVELOPMENT AUTHORITY OF FAUQUIER COUNTY, VIRGINIA (the “Authority”), a political subdivision of the Commonwealth of Virginia,

**WITNESSETH:**

WHEREAS many businesses in Fauquier County are home based and many residents telecommute or desire to do so; and

WHEREAS the extension of broadband provides enhanced educational opportunities and furthers workforce development which supports economic development in Fauquier County; and

WHEREAS the availability of secure, reliable, competitive and sustainable infrastructure is essential to meet future broadband needs; and

WHEREAS small and medium size business enterprises with greater high-speed internet use grow faster than those with less high-speed internet use; and

WHEREAS the internet is a powerful catalyst for job creation; and

WHEREAS the internet drives economic modernization; and

WHEREAS the County and the Authority wish to make funds available for the purpose of inducing WATERFORD to provide and expand access to Broadband through “Extended DSL” at an accelerated pace by installing up to 5 “switches” at Verizon “Outside Plant Boxes” or other Fiber locations which will provide for DSL service from the switches to individual customers over existing

copper Verizon telephone lines in areas under-served by broadband as further identified on the Exhibit A attached hereto and incorporated herein; and

WHEREAS the PATH Foundation, has awarded a \$50,000 Grant to the County with the expectation that the County will provide such funds to the Authority and the Authority will provide the funds to WATERFORD, provided that WATERFORD has agreed to meet certain performance targets relating to construction of infrastructure, and expanding access to, Extended DSL broadband service; and

WHEREAS the County, the Authority, FCBA and WATERFORD desire to set forth their understanding and agreement as to the payout of funds resulting from the Grant, the use of the proceeds of the Grant, the obligations of WATERFORD regarding Capital Investment and the payment to FCBA of proceeds from subscriber revenue; and

WHEREAS, it is anticipated that the construction, equipping, operation and installation of the initial phase of the Extended DSL broadband project will require a capital expenditure of approximately \$50,000; and

WHEREAS, PATH has committed to provide a Grant to County to be disbursed by the Authority and directed to WATERFORD in order to subsidize WATERFORD's anticipated expenditure and provide for the installation of Extended DSL through purchase of equipment and completion of up to 5 switches in areas not presently served by DSL, Cable or Fiber internet services available to individual consumers; and

WHEREAS the stimulation of additional tax revenue to the County and economic activity in the County to be generated by the Capital Investment constitutes a valid public purpose for the expenditure of public funds and is the primary purpose of the Grant by the Authority:

NOW, THEREFORE in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this MOU, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**Section 1 - Broadband Installation Plan.**



Within sixty (60) days of the execution of this MOU, WATERFORD shall confirm that Verizon will authorize it to provide Extended DSL in the County through an interconnection agreement and shall provide to the County with a broadband installation plan for installation of up to 5 switches which will provide extended DSL from Verizon fiber or other fiber vendor. "Extended DSL" shall mean Digital Subscriber Line broadband internet which shall be provided from fiber to DSL junction boxes through existing copper telephone lines to individual customers, and shall include all modems and other equipment connected with such DSL service, and any contracts necessary to facilitate such service. The plan shall include the locations where WATERFORD proposes to install Extended DSL broadband infrastructure and the means WATERFORD will utilize to secure customers to be served by up to 5 switches. The switches shall be located in areas in which individual customers are not currently served by fiber, DSL or cable broadband unless otherwise agreed by County. WATERFORD shall also provide a final fee structure for customers which shall detail the means through which monthly service charges and connection fees are to be determined. This fee structure shall be subject to the approval of County.

**Section 2 - Continuation of Service/New Customers.**

WATERFORD agrees that as long as a reasonable demand exists for broadband service, WATERFORD will continue to provide broadband service to existing and new subscribers who reside within the feasible service distance from each of the switches installed pursuant to Section 1 and are served by Verizon copper telephone lines. WATERFORD shall provide the Extended DSL service for the fees identified on the document attached hereto and incorporated herein as Exhibit A.

**Section 3 - Disbursement of Grant.**

(a) Notwithstanding anything in this MOU to the contrary, the Authority will not have any obligation to disburse any portion of the Grant under this MOU until and unless this MOU is approved by the County's Board of Supervisors and the Authority has received such funds from PATH.

(b) Subject to the delivery of the Grant by the County to the Authority, within thirty (30) days of its receipt of the Grant funds, the Authority will disburse \$20,000 of the Grant funds to

WATERFORD on condition that WATERFORD has complied with Section 1 of this MOU.

Upon completion of the first switch, the Authority will disburse an additional \$15,000. Upon completion of the second switch, the Authority shall disburse the remaining \$15,000.

**Section 4 - Provision of Revenue to FCBA, Installation and Connection Fees.**

WATERFORD shall provide FCBA with 40 percent of its gross profit associated with the provision of DSL from the switches authorized by this MOU, on a quarterly basis at the beginning of each quarter (i.e., January 1, April 1, July 1, and October 1). Gross Profit shall be defined as gross subscription revenue less the following monthly expenses: switch electricity, relevant fiber usage fees, internet service provider fees and Verizon copper line rental fees. Supporting documentation to be provided upon demand by the County. WATERFORD shall be entitled to charge and retain one-time subscriber installation and connection fees identified on Exhibit B.

**Section 5 – Termination for Cause.**

County may terminate this MOU in the event that (1) WATERFORD does not comply with Section 1 herein, (2) WATERFORD fails, within 1 year of the date of this MOU to provide the switches provided for herein and diligently pursue customers to be served by the switches, (3) WATERFORD fails to provide the 40 percent net revenue to FCBA provided for herein, or (4) WATERFORD exceeds the cost estimates shown on the attached exhibit “B.” In the event of Termination for Cause by County or termination by WATERFORD because it is unable to operate profitably as provided for herein, title to all equipment purchased by WATERFORD in order to provide extended DSL shall be transferred to County. WATERFORD shall refund to the Authority, and Authority shall return to County any portion of the funds provided pursuant to this MOU not used to purchase equipment necessary to provide Extended DSL under the terms of this MOU. WATERFORD may terminate the contract in the event that the grant funding provided by this MOU is not provided, or it is unable to operate profitably.

**Section 6 – Sale or Assignment by WATERFORD.**

WATERFORD shall not sell or assign the assets purchased to comply with this MOU without the written consent of County. In the event of a Termination for Cause by County or WATERFORD, WATERFORD shall assign all subscribers, contracts and associated equipment to County or County's designee. Should County subsequently convey the assets of WATERFORD to a private provider within 2 years of such assignment, WATERFORD shall be entitled to a first right of refusal at the contractual sale price obtained by County. The first right of refusal must be exercised within thirty days of County obtaining the contract.

**Section 7 – Miscellaneous.**

(a) Entire Agreement; Amendments: This MOU constitutes the entire agreement among the parties and may not be amended or modified, except in writing, signed by each of the parties

(b) Governing Law; Venue: This MOU is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia without regard to its conflict of laws provisions.

(c) Counterparts: This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) Attorneys Fees: In the event of a dispute arising under this MOU, each party shall bear its own attorneys fees.

(d) Severability: If any provision of this MOU is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(f) County agrees to assume responsibility for filing of any final report required of Authority by the by PATH Foundation

**Section 8 – Notices.**

Any notices required or permitted under this MOU shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

If to County:

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

If to WATERFORD:

Bruce Davis  
Waterford Telephone Company  
16601 Mosswood Drive  
Hamilton, Virginia 20158

If to Fauquier County Broadband Authority:

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

If to Fauquier County Economic Development Authority:

Chairman  
10 Hotel Street  
Warrenton, Virginia 20186

IN WITNESS WHEREOF, the parties hereto have executed this Performance MOU as of the date first written above:

FAUQUIER COUNTY BOARD OF SUPERVISORS, a political subdivision of the Commonwealth of Virginia

By  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FAUQUIER COUNTY BROADBAND AUTHORITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia:

By  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FAUQUIER COUNTY ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia:

By  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WATERFORD TELEPHONE COMPANY, a Virginia limited liability company

By  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ANNOUNCEMENTS**

- Mr. Gerhardt announced that two unsolicited proposals for the installation of fiber infrastructure had been received. He said that a work session will be scheduled on September 14, 2017, in order that the Board of Supervisors may consider both proposals.
- Mr. Gerhardt announced that an advertisement for a Broadband Project Manager had been posted, however, the position will remain unfilled until there is a final decision for a vendor.

**ADJOURNMENT**

Mr. Gerhardt moved to adjourn. Mr. Butler seconded and the motion carried by a vote of 4-0 as follows:

**Ayes:** *Mr. Christopher T. Butler; Mr. Richard R. Gerhardt; Mr. Christopher N. Granger; Mr. R. Holder Trumbo, Jr.*

**Nays:** *None*

**Absent During Vote:** *Ms. Mary Leigh McDaniel*

**Abstention:** *None*

With no further business, the meeting was adjourned at 11:09 A.M.

*I hereby certify that this is a true and exact record of actions taken by the Fauquier County Broadband Authority on August 10, 2017.*



*Paul S. McCulla*  
 \_\_\_\_\_  
 Paul S. McCulla, Clerk  
 Fauquier County Broadband Authority