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June 20, 2016

Mr. Peter Larkin
Chairman, Board of Directors
Massachusetts Broadband Institute
75 North Drive
Westborough, MA 01581

Re: Broadband Extensions Program Grant

Dear Mr. Larkin:

I am writing in response to a request from the Board of Directors of the Massachusetts Broadband Institute (“MBI”) to review the broadband extensions program grant record and evaluate, in my capacity as a member of the Board as the Commissioner of the Department of Telecommunications and Cable, the MBI staff recommendation to move forward to negotiate terms of a grant agreement with Comcast in Hardwick and Montague. I understand that a final decision will then be made by the MBI Board of Directors and the Executive Committee of the Massachusetts Technology Collaborative (“MTC”) Board of Directors. I have reviewed the grant applications, follow-up information submitted by the applicants, and the public comments received in writing and at the May 24, 2016, public meeting on this matter. For the reasons set forth below, I recommend that the MBI Board of Directors adopt the conclusion in the MBI staff recommendation and move forward to negotiate terms of a grant agreement with Comcast in Hardwick and Montague because Comcast’s grant proposal will provide the best value to Hardwick, Montague, MBI, and the Commonwealth of Massachusetts.

Background

In July 2015, MBI issued guidelines for the broadband extensions program grant, seeking qualified applicants to whom MBI could issue state grant funds for cable plant construction or extension and management in certain partially-served towns in Central and Western Massachusetts.¹

¹ Massachusetts Technology Collaborative, Request for Qualifications for Cable System Extensions, RFQ No. 2015-MBI-03 (June 19, 2015). The purpose of the broadband extensions program is to issue a grant supporting expansion of residential broadband in Central and Western Massachusetts. Thus, while the process MBI used to issue this grant was referred to as a request for qualifications (“RFQ”), I hereinafter refer to the RFQ as the “Grant Guidelines.” See MASS. OFFICE OF THE COMPTROLLER, MMARS POLICY, STATE GRANTS, FED. SUBGRANTS AND SUBSIDIES (2014), <http://www.mass.gov/comptroller/docs/policies-procedures/contracts/po-procon-state-grants-fed-sub.pdf> (stating that the process under Massachusetts grant regulations is similar to the process under Massachusetts procurement regulations and that the term “grant application” denotes any other forms of solicitation documents including an RFQ).

The main objective of the grant program is to expand the availability of broadband in these communities in a way that “maximizes the impact of limited public resources, leverages other sources of funding (to the extent necessary and appropriate), and promotes economic growth in the region.”² MBI through the grant program sought applications from entities “with experience in providing residential broadband internet and related services.”³ MBI desired applicants with the ability to complete the broadband extension project on budget, on schedule, and in a manner consistent with industry standards.⁴ Additionally, as stated in the grant guidelines, MBI desired applicants with the financial, technical, and organizational capabilities to deploy and sustain the broadband extension project.⁵ Finally, the grant guidelines highlighted MBI’s desire for applicants that have the capacity to coordinate with municipalities to be served and the ability to propose services reasonably comparable to existing options available in the communities.⁶ MBI placed particular importance on prior successful completion of projects of similar scope and magnitude.⁷

MBI stated that it would base its selection of an applicant(s) for further discussions (the “due diligence phase”) on the applicant’s: ability to provide consumer grade broadband service; ability to provide additional services to residents (i.e., video, telephony); capability to integrate with existing networks, if necessary; ability to work with public entities in the Commonwealth of Massachusetts; scale with respect to securing wholesale prices for bill of materials; commitment to increasing the rate of homes passed in the communities to at least 96%; ability to complete the broadband extension project in a timely manner; existing engagement with municipalities or commitment to engage; and lack of debarment status by either the state or federal government.⁸ MBI’s grant webpage states that MBI intended “to engage in grant award agreements with any selected providers at the conclusion of the due diligence phase.”⁹

For seven of the towns, Comcast was the only applicant. For Montague and Hardwick, two companies, Comcast and Matrix Design Group, Inc. (“Matrix”),¹⁰ submitted grant applications. After reviewing the grant applications, MBI qualified both Comcast and Matrix to participate in the due diligence phase of the broadband extensions grant process in Hardwick and Montague. Between September 2015 and April 2016, MBI engaged in due diligence and evaluation of the companies’ grant proposals, requesting additional information from each.¹¹ Additionally, MBI hired two

² Grant Guidelines at 3.

³ Grant Guidelines at 2.

⁴ Grant Guidelines at 3.

⁵ Grant Guidelines at 4.

⁶ Grant Guidelines at 4.

⁷ Grant Guidelines at 3.

⁸ Grant Guidelines at 5-6.

⁹ <http://broadband.masstech.org/news-and-updates/news/procurements/rfq-cable-system-extensions>.

¹⁰ Unless otherwise noted, references to Matrix herein refer to Matrix Design Group, Inc. and Millennium Communications Group Inc., collectively.

¹¹ *See, e.g.*, September 10, 2015, Letter from Elizabeth Copeland to Alicia Matthews; September 10, 2015, Letter from Elizabeth Copeland to Chris Lynch; December 24, 2015, Letter from Eric Nakajima to Alicia Matthews; December 24, 2015, Letter from Eric Nakajima to Chris Lynch; January 27, 2016, email from Eric Nakajima to Chris Lynch; April 7, 2016, Letter from Michael Baldino to Ron Cassel.

technical consultants, Tilson Technology Management, Inc. (“Tilson”) and Wipro Technologies (“Wipro”), to assist in its review of the grant proposals of Comcast and Matrix.¹²

In February 2016, the Board of Selectmen in both Montague and Hardwick voted to recommend that MBI choose the Matrix grant proposal for the broadband extensions grant.¹³ Subsequently, in April 2016, both Tilson and Wipro recommended that MBI award the grant to Comcast due to sustainability concerns with Matrix’s grant proposal.¹⁴ Taking into account all of the above, on May 4, 2016, MBI staff recommended that MBI award the grant funding under the broadband extensions program grant for Hardwick and Montague to Comcast.¹⁵ I have been asked to review the record and assess whether the MBI Board of Directors should adopt the conclusion in the MBI staff recommendation. As part of this review, a public meeting was held on May 24, 2016, in Amherst, Massachusetts, and all interested stakeholders have been provided an opportunity to file written comments on this matter.

MBI’s Evaluation Standard and Grant Process

Before assessing the merits of the MBI staff recommendation, it is important to review MBI’s evaluation standard and grant process. The record shows that the specific evaluation criteria MBI set forth in the grant guidelines are reasonable for a broadband extensions program grant of this scope and magnitude. The record also reveals that MBI followed these grant guidelines throughout this grant process.

The record reflects that each applicant had a full and fair opportunity to present its grant proposal and capabilities to MBI. Specifically, after receiving the grant applications, MBI staff conducted due diligence review of the grant proposals and requested additional information as necessary.¹⁶ MBI gave the applicants multiple opportunities to respond to follow up inquiries in the event an applicant did not directly address a question in the first instance.¹⁷ Specifically with respect to Matrix, MBI asked for financial information and a detailed business operations plan several times.¹⁸ Michael Baldino, the Associate General Counsel of MTC, noted in an April 7, 2016, letter that MBI was “offering Matrix a final opportunity to submit information to MBI that addresses and clarifies Matrix’s relevant experience, financial capacity and resources, approach to operating

¹² MBI staff recommendation at Exhibit A and Exhibit B. In its response to the MBI staff recommendation and at the public meeting, Matrix claims that Tilson is not a truly independent arbiter of Comcast’s and Matrix’s grant proposals. Matrix Response to MBI staff recommendation at 3; *see also* Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Rob Steinberg (filed May 26, 2016); Written Comments of Jeff Singleton (filed May 26, 2016). I make no finding with respect to this claim, but out of an abundance of caution I place no weight in this recommendation on Tilson’s analysis. Additionally, because I make no finding with respect to Matrix’s claim, the decision to exclude Tilson’s analysis from my consideration should not be construed in any way as a commentary on Tilson’s work product, the appropriateness of MBI staff relying on the Tilson report in its recommendation, or the suitability of Tilson as an MBI consultant, generally, as such matters are outside the scope of this recommendation.

¹³ April 18, 2016, Letter from Ron Cassel to Michael Baldino at Exhibit 1.

¹⁴ MBI staff recommendation at Exhibit A and Exhibit B. *But see supra* n.12.

¹⁵ MBI staff recommendation.

¹⁶ *See* <http://broadband.masstech.org/news-and-updates/news/procurements/rfq-cable-system-extensions>.

¹⁷ *See* Written Comments of Charles Kelley (filed May 26, 2016).

¹⁸ *See infra* pp. 10-11, 13-14.

networks in Hardwick and Montague, and the sustainability of the proposed projects in those towns.”¹⁹ MBI’s due diligence phase, including repeated follow-up with the grant applicants to attempt to obtain the necessary information has ensured that the MBI Board of Directors is in a position to make an informed decision regarding the appropriate disposition of the broadband extensions program grant funds.

The record reflects that some commenters are not satisfied with MBI’s process.²⁰ MBI’s process was reasonable and appropriate for this grant. In the future, MBI could consider more clearly defining and explaining this process, particularly in the due diligence phase. For example, in future grants MBI could consider how better to communicate its procedure for concluding the due diligence phase of the grant program.

The record also reflects concern that MBI qualified Matrix as a grant program participant and then later disqualified the company.²¹ It seems clear based on the record that MBI never disqualified Matrix, but rather MBI staff merely found that Comcast’s grant proposal was stronger.²²

Notwithstanding these comments, based on the criteria contained in the grant guidelines—criteria that are reasonable for a broadband network design, construction, and operation grant—the MBI Board of Directors is now in a position to make an informed decision regarding the appropriate disposition of the broadband extensions program grant funds. Comcast and Matrix each had a full and fair opportunity to be heard during this process, and the process was sufficient to enable MBI staff to make an informed recommendation and the MBI Board of Directors to make an informed decision.

Recommendation

Upon review of the record, and for the reasons stated below, I recommend that the MBI Board of Directors adopt the conclusion in the MBI staff recommendation. I base this recommendation on all relevant factors outlined in the grant guidelines, including the desired characteristics of applicants and grant proposals outlined in Sections 1 and 3.1 of the grant guidelines, the desired qualifications of applicants outlined in Section 3.2 of the grant guidelines, the applicants’ responses to the key questions contained in Section 3.3 of the grant guidelines, and the criteria outlined in Section 5.2 of the grant guidelines.²³ I have also taken into account which grant proposal would provide the best value to Hardwick, Montague, MBI, and the Commonwealth of Massachusetts, where best value is the result of common sense decision-making.²⁴ Finally, I have taken into account the public

¹⁹ April 7, 2016, Letter from Michael Baldino to Ron Cassel at 2.

²⁰ See, e.g., Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Chris Pinardi (filed May 17, 2016); Written Comments of Lisa Enzer (filed May 26, 2016); Written Comments of Bob Mahler (filed May 26, 2016).

²¹ See Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Nancy S. Allen, Chair, Town of Petersham Office of the Selectboard (filed May 26, 2016).

²² I note that the record is devoid of any formal indication of MBI’s qualification of Matrix and Comcast. The lone reference to the qualification is on MBI’s webpage for this grant. See <http://broadband.masstech.org/news-and-updates/news/procurements/rfq-cable-system-extensions>. In the future, MBI should consider issuing more formal statements of qualification including the reasons therefor.

²³ See Grant Guidelines at 2, 3-4, 5-6.

²⁴ See 801 C.M.R. § 21.02 (defining “best value”); Grant Guidelines at 6 (stating that MBI would consider any other information that would lead it to ascertain the grant proposal that would provide the best value). I note that

comments received at the public meeting and the public comments filed in writing with my office.²⁵ Given the focus of these public comments and the requirements and desired characteristics repeatedly called for in the grant guidelines, I focus on the applicants' (1) proposed service offerings, (2) community outreach and coordination, (3) financial capacity, and (4) technical capabilities.

The record reflects that while Matrix proposes a fiber network and has demonstrated the necessary capacity for community outreach, Comcast has demonstrated superior financial capacity and technical capability to deploy and sustain the broadband extension project. In making this recommendation, I am sensitive to the requests of the Towns of Hardwick and Montague. And while I have taken those requests into consideration, MBI must choose the better grant proposal. The record objectively reveals that Comcast's grant proposal will provide the best value.

Matrix acknowledges that awarding the broadband extensions program grant to Comcast is the "safe path" for the Commonwealth.²⁶ Matrix continues later to say the following: "the easiest, safe bet for MBI would be to provide the grant money directly to Comcast."²⁷ The record belies any contrary conclusion. Based upon the facts at hand here, the easiest, safest choice is also the choice that comes as a result of common sense decision-making. MBI is seeking to distribute a state grant funded by each citizen of the Commonwealth, to expand residential broadband internet access in partially-served towns, including Montague and Hardwick. MBI should not increase the risk associated with its distribution of these public funds. While it is not the case that the easiest, safest proposal will provide the best value in every instance, the record reflects that in this case, the safe grant proposal and the grant proposal providing the best value is Comcast's. While I have considered requests to reopen the grant process,²⁸ reset the grant process entirely,²⁹ pause the review, or seek to amend Massachusetts law and issue new grant guidelines,³⁰ such options will unnecessarily delay broadband deployment to unserved residents of Hardwick and Montague. Moreover, given that Comcast and Matrix each had a full and fair opportunity to present their respective grant proposals, requested further delays of this process will not create a reasonable prospect of any demonstration that Comcast's grant proposal will not provide the best value. The record erases any doubt that Comcast has the financial, technical, and organizational capabilities to deploy and sustain the broadband extension project in Montague and Hardwick.

as MBI is a quasi-public agency and the broadband extensions program is by its own terms a grant program, Massachusetts procurement regulations do not control MBI's review of the grant proposals. *See* 801 C.M.R. § 21.01(2)(a) (limiting the application of Massachusetts procurement regulations to the procurement of goods and services by executive agencies and departments, and stating that the regulations do not apply to grants). This fact notwithstanding, the best value standard is applicable and is the most appropriate tool for my review of the record. MASS. OFFICE OF THE COMPTROLLER, MMARS POLICY, STATE GRANTS, FED. SUB-GRANTS AND SUBSIDIES (2014), <http://www.mass.gov/comptroller/docs/policies-procedures/contracts/po-procon-state-grants-fed-sub.pdf> (stating that grants should be disbursed using "best value, fiscal responsibility and other common sense business practices.").

²⁵ *See, e.g.*, Written Comments of Nell Wright (filed May 26, 2016).

²⁶ April 18, 2016, Letter from Ron Cassel to Michael Baldino at 4.

²⁷ April 18, 2016, Letter from Ron Cassel to Michael Baldino at 8.

²⁸ *See* Written Comments of Bob Mahler (filed May 26, 2016).

²⁹ *See* Written Comments of Lisa Enzer (filed May 26, 2016).

³⁰ *See* Hardwick and Montague Broadband Committees Response to MBI staff recommendation (referencing the legislation that implemented this grant program, now codified at M.G.L. c. 40J, § 6B(d)); Written Comments of Lisa Enzer (filed May 26, 2016).

Proposed Service Offerings

As noted by a number of commenters, Matrix proposes a fiber network and Comcast proposes a coaxial cable network.³¹ The record indicates that Matrix's proposed fiber infrastructure will initially provide higher speed capabilities than the coaxial network proposed by Comcast.³² However, Comcast's proposed technology is industry-standard and its initial proposed speed availability (up to 150 Mbps) exceeds the grant program requirement and the Federal Communication Commission's ("FCC") definition of broadband.³³ Additionally, Comcast stated that in the future Hardwick and Montague residents should expect to see speeds of over 1 gigabit per second.³⁴ Comcast's proposed service offerings thus, while not backed by a fiber network as is proposed by Matrix, far exceed the requirements of this grant program and the FCC's definition of broadband. Additionally, as Comcast is the incumbent terrestrial broadband provider in the served areas of Montague and Hardwick, Comcast's proposed offerings are "reasonably comparable to existing options available" in the towns, as called for in the grant guidelines.³⁵

In addition, Comcast also proposes to offer low-income families the opportunity to participate in its Internet Essentials program, under which Comcast offers service for \$9.95 per month.³⁶ Matrix does not offer a similar low-income program. Additionally, it bears noting that Comcast has committed to offering video service in addition to internet and phone service—a service of benefit to the residents of Montague and Hardwick that Matrix does not offer.³⁷

Public commenters both at the public meeting and in writing have criticized the customer service that Comcast would provide in concert with its service offerings.³⁸ While such comments are certainly an important consideration, if a network is not sustainable and fails as a result, the quality of the network operator's customer service is moot. In this case, given the technical and financial considerations explained in detail below, the customer service record of the companies should be afforded little weight.³⁹ However, I note that because Comcast's proposal includes video service, if MBI negotiates a grant agreement with Comcast in Hardwick and Montague, the company's expanded service area would be subject to the applicable federal, state, and local customer service standards in its franchise agreements in the towns.

³¹ Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Kirstin Beatty (filed May 24, 2016); Written Comments of Jochen Welsch (filed May 25, 2016); Written Comments of Robert Page (filed May 25, 2016); Written Comments of Mary McCarthy (filed May 26, 2016).

³² See April 18, 2016, Letter from Ron Cassel to Michael Baldino at 4, 8.

³³ The FCC defines broadband as actual download speeds of at least 25 Mbps and actual upload speeds of at least 3 Mbps.

³⁴ Comcast Grant Application at 6.

³⁵ Grant Guidelines at 4; Comcast Grant Application at 8.

³⁶ Comcast Grant Application at 2.

³⁷ Comcast Grant Application at 1-2.

³⁸ See Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Anne and Bob Weaver (filed May 26, 2016); Written Comments of Kip Williams (filed May 26, 2016).

³⁹ See *infra* pp. 10-14 (finding material concerns with Matrix's financial and technical capabilities).

Matrix proposes to pass more unserved homes in Montague and Hardwick than is proposed in Comcast's initial grant application.⁴⁰ Matrix proposes to pass 189 unserved homes in Hardwick and 173 unserved homes in Montague.⁴¹ Comcast proposes to pass 174 unserved homes in Hardwick and 65 unserved homes in Montague, in addition to the homes it already serves or has agreed to serve.⁴² While the proposed number of homes passed is an important aspect of the grant proposals under the grant guidelines, similar to the issue of customer service, if a network is not sustainable and fails, it will not provide service to any homes. Moreover, while Matrix's initial proposed network would pass more homes than Comcast's as initially proposed, Comcast stated that it is committed to working with the towns, including Hardwick and Montague, "to expand [its] plant to *every resident seeking service*."⁴³ Comcast stated that it would "seek to partner with the Commonwealth, towns or individual consumer [sic]" in order to reach unserved locations not included in Comcast's initial grant application.⁴⁴ I strongly encourage MBI to consider making this proposed partnership and expanded buildout a part of any grant negotiations with Comcast in Hardwick and Montague.

As Comcast noted, the grant guidelines do not state the number of homes in each town.⁴⁵ In fact, as was raised at the public meeting, there is a discrepancy in the record as to how many unserved homes and total homes there are in Montague and Hardwick.⁴⁶ MBI should work with the towns and with Comcast in the immediate future to ascertain a precise, agreed-upon number of unserved and total homes in each town, and the location of such unserved homes. Only then will MBI be able to finalize grant negotiations with Comcast taking into account Comcast's commitment to work towards serving every resident in Montague and Hardwick seeking service.⁴⁷ While 96% penetration was the threshold in this grant program, additional homes passed above that threshold would be a desired outcome beneficial to the communities and the Commonwealth.

In response to concerns that Comcast's grant proposal would not leverage the publicly-funded MassBroadband 123 backbone,⁴⁸ I note that the grant guidelines seek to leverage other sources of funding only "to the extent necessary and appropriate."⁴⁹ Comcast's proposed use of its own infrastructure to serve as the backbone of the broadband extension renders its use of the MassBroadband 123 backbone unnecessary in this limited instance.

⁴⁰ See Written Comments of Richard Davis (filed May 24, 2016); Written Comments of Victoria Rupp (filed May 25, 2016); Written Comments of Dan and Suzanne Halkyard (filed May 25, 2016); Written Comments of Anne and Bob Weaver (filed May 26, 2016); Written Comments of Sarah Bliss (filed May 26, 2016); Written Comments of Patrick Pezzati (filed May 26, 2016).

⁴¹ January 21, 2016, Letter from Chris Lynch to Eric Nakajima at 2.

⁴² January 15, 2016, Letter from Alicia Matthews to Eric Nakajima at Attachment 1.

⁴³ Comcast Grant Application at 5 (emphasis added).

⁴⁴ October 2, 2015, Letter from Alicia Matthews to Elizabeth Copeland at 2.

⁴⁵ Comcast Grant Application at 7.

⁴⁶ See Written Comments of Al Averill (filed May 25, 2016); Written Comments of Jeff Singleton (filed May 26, 2016).

⁴⁷ See Comcast Grant Application at 5.

⁴⁸ See Written Comments of Richard Davis (filed May 24, 2016); Written Comments of Bob Mahler (filed May 26, 2016).

⁴⁹ Grant Guidelines at 3.

In sum, the record reflects that both grant proposals would meet the service offerings standards of this grant program. While Matrix's proposed service offerings are appealing, they must be viewed in light of the financial and technical considerations discussed in full below.

Community Coordination

The record indicates that Matrix has exhibited the necessary capacity for community outreach and coordination.⁵⁰ Matrix has clearly shown a willingness to coordinate and work with communities to achieve a common goal, particularly with respect to Montague, Hardwick, Petersham, and the communities involved with Vermont's EC Fiber network.⁵¹ This willingness is evidenced by the letters from the Hardwick Board of Selectmen and the Montague Board of Selectmen, as well as several public comments, both written and presented orally at the public meeting.⁵² Overall, Matrix's ability to communicate and coordinate with municipalities weighs in its favor.

While Matrix's proposal to grant the communities the option to purchase the network and Matrix's commitment to sell the network to the towns for \$10 at the end of a 20-year period may seem like an added benefit for the communities, the significance of the financial and technical issues discussed below—and, indeed, the basis for my ultimate recommendation—pertain to those first 20 years, particularly the first few years when the network is being constructed and in the early phases of operation. The goal of this grant program is to extend sustainable broadband and potentially other services to unserved locations in Hardwick and Montague. Supplementary components of a grant proposal in this program such as the purchase option in Matrix's proposal (or the video component of Comcast's proposal), while no doubt a potential benefit to the communities, should be secondary to the importance of the actual construction, operation, and sustainability of the network extensions.⁵³ While Matrix is correct that municipal ownership and control of a network can be an important factor for MBI to consider in certain contexts, that is not the case here where the majority of the network in the communities is already built out and owned by a private entity and where there is a more immediate evaluation to be made with respect to the construction, operation, and sustainability of the network.

⁵⁰ See April 18, 2016, Letter from Ron Cassel to Michael Baldino at 4, 5; Written Comments of Nancy S. Allen, Chair, Town of Petersham Office of the Selectboard (filed May 26, 2016).

⁵¹ See Written Comments of Nancy S. Allen, Chair, Town of Petersham Office of the Selectboard (filed May 26, 2016); Written Comments of Jeff Singleton (filed May 26, 2016).

⁵² See April 18, 2016, Letter from Ron Cassel to Michael Baldino at Exhibit 1. The record also reveals, however, that Matrix's only prior experience working substantively with a Massachusetts community was not without its difficulties. Specifically, in 2013, the Town of Leverett hired Matrix to design its fiber network. See Matrix Grant Application at Section 3.3 Key Questions. The record reveals that this relationship led to a dispute between Matrix and Leverett regarding a number of construction and payment issues. See MBI staff recommendation at 6; Matrix Response to MBI staff recommendation at 2-3. Matrix provided additional details of this dispute during the public comment period. Written Comments of Ron Cassel at Attachment 1, Attachment 2 (filed May 26, 2016). Although the dispute was eventually settled, the fact that there was a dispute that escalated to legal action is troubling. See Matrix Response to MBI staff recommendation at 3; Written Comments of Jeff Singleton (filed May 26, 2016). Nevertheless, there is not enough information in the record regarding this dispute to afford the dispute any substantial weight in my recommendation. See Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Jason Burbank (filed May 26, 2016).

⁵³ Additionally, nowhere in the grant guidelines is such a purchase option required or encouraged.

A number of public commenters have criticized Comcast's capacity for community outreach and engagement.⁵⁴ I do note that Comcast has demonstrated the capacity to coordinate with local franchising authorities across the Commonwealth, in many of which Comcast regularly commits to expanding its system to unserved premises.⁵⁵ I also note that while Matrix has proven willing to engage with the communities at this early stage of the project, this willingness does not necessarily equate to customer service capabilities and continued effective coordination if and when the network is built. Overall, however, giving deference to the opinion of the affected communities, the record reflects that Matrix has demonstrated the necessary capacity for community outreach and coordination.

Financial Capacity

Undoubtedly one of the greatest strengths of Comcast's grant proposal as compared to that of Matrix is Comcast's financial capacity to deploy and sustain the broadband extension project. As the MBI staff recommendation correctly notes: "Comcast's public securities filings show that it has substantial revenues and cash reserves, and more than adequate financial resources to fund the network extensions involved here. They also show that Comcast can be held fully accountable if it fails to comply with the requirements of a grant agreement with MBI."⁵⁶ In short, Comcast's financial capacity to deploy and sustain the broadband extension project is beyond question.

Conversely, the record leaves doubt as to Matrix's financial capacity to do the same.⁵⁷ Matrix has conceded that it would need to pass at least 1000 premises in order to sustain its proposed network.⁵⁸ This is critically problematic because Matrix proposes to pass only 362 unserved households in Montague and Hardwick.⁵⁹ In fact, according to Matrix, there are only 407 unserved homes in the communities.⁶⁰ The record also contains the results of a recent Dun & Bradstreet ("D&B") credit report on Millennium Communications Group Inc. ("Millennium").⁶¹ The report lists Millennium, which is Matrix's principal and inextricably intertwined with Matrix's grant application,

⁵⁴ Hardwick and Montague Broadband Committees Response to MBI staff recommendation; Written Comments of Nancy S. Allen, Chair, Town of Petersham Office of the Selectboard (filed May 26, 2016); Written Comments of Rebecca Borelli (filed May 23, 2016); Written Comments of Anne and Bob Weaver (filed May 26, 2016); *see also* Written Comments of Jeff Singleton (filed May 26, 2016).

⁵⁵ *See* Comcast Grant Application at 2. Cable franchise agreements are available at <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/municipal-info/cable-television-licenses.html>.

⁵⁶ MBI staff recommendation at 2.

⁵⁷ *See* Written Comments of Jeff Singleton (filed May 26, 2016).

⁵⁸ For a full discussion of this issue, *see infra* p. 12. There is a discrepancy in the record as to whether Matrix estimates it would need 1000 premises passed or 1000 subscriptions in order to sustain its proposed network. *Compare* Written Comments of Rob Steinberg (filed May 26, 2016), *with* Wipro Report at 3, *and* MBI staff recommendation at 4. For purposes of this recommendation, I assume that Matrix would need 1000 premises passed. *See* Hardwick and Montague Broadband Committees Response to MBI staff recommendation.

⁵⁹ January 21, 2016, Letter from Chris Lynch to Eric Nakajima at 2.

⁶⁰ January 21, 2016, Letter from Chris Lynch to Eric Nakajima at 2.

⁶¹ Tilson Report at 6; Wipro Report at 3; MBI staff recommendation at 3. Although I do not rely on Tilson's analysis, I cannot in good faith ignore the objective, third party information therein.

as having a “high risk of severe payment delinquency” and a “high risk of severe financial distress.”⁶² While I do not place substantial weight on this report, when the report is coupled with the lack of other evidence of Matrix’s financial condition as discussed below and the aggressive targets Matrix would need to reach to achieve success, the result is a highly risky grant proposal, particularly when compared to the stability of the Comcast grant proposal.

Moreover, Matrix’s failure to document its financial capacity despite several requests for such documentation from MBI, leads to the conclusion that Matrix has not demonstrated its financial stability and financial capacity to sustain its proposed network.⁶³ The closest Matrix has come to demonstrating its financial capacity was at the public meeting where Matrix read a trade letter from TD Bank. As an initial matter, it is unclear why this letter was not provided to MBI previously,⁶⁴ but more importantly, this letter is insufficient in light of the lack of any company financial information in the record. The Hardwick and Montague Broadband Committees state that they reviewed Matrix’s financials and, “upon initial review,” found no concerns.⁶⁵ Matrix could have provided these financials to MBI as well, but did not do so in its initial grant application or during the subsequent due diligence phase. Matrix argues that it “made repeated offers to provide additional financial information subject to standard confidentiality provisions.”⁶⁶ Matrix states that it received no response to these offers, but it is not apparent why Matrix would expect a response to such an offer in this grant application process.⁶⁷ Confidential treatment of applicants’ information was not contemplated in this grant program in the manner in which Matrix proposed. Matrix’s offers with respect to purportedly proprietary information were inconsistent with the Massachusetts Public Records Law and other terms and conditions in the grant guidelines. The grant guidelines clearly state that “[a]ny statements reserving any confidentiality or privacy rights in submitted responses or otherwise inconsistent with [the Massachusetts Public Records Law] will be void and disregarded.”⁶⁸ The grant guidelines also state that where confidentiality requests are consistent with the Massachusetts Public Records Law, any confidentiality procedures “apply only to hard copy documents, and *are not applicable to information submitted . . . verbally.*”⁶⁹ Matrix had multiple opportunities to provide company financial information in accordance with the Massachusetts Public Records Law, but failed to do so. The lack of financial information sufficient to demonstrate

⁶² MBI staff recommendation at 3. There is no D&B report on Matrix in the record.

⁶³ See Grant Guidelines at 4, 5; December 24, 2015, Letter from Eric Nakajima to Chris Lynch at 2; January 27, 2016, email from Eric Nakajima to Chris Lynch; April 7, 2016, Letter from Michael Baldino to Ron Cassel at 2.

⁶⁴ Matrix states that MBI did not ask specifically for bank or trade references in the due diligence phase. Matrix Response to MBI staff recommendation at 2. However, the grant guidelines asked applicants to demonstrate their financial capacity and MBI staff clearly focused on Matrix’s finances throughout the due diligence phase. Grant Guidelines at 4; December 24, 2015, Letter from Eric Nakajima to Chris Lynch at 2; January 27, 2016, email from Eric Nakajima to Chris Lynch; April 7, 2016, Letter from Michael Baldino to Ron Cassel at 2.

⁶⁵ Hardwick and Montague Broadband Committees Response to MBI staff recommendation.

⁶⁶ Matrix Response to MBI staff recommendation at 2.

⁶⁷ Matrix Response to MBI staff recommendation at 2.

⁶⁸ Grant Guidelines at 6; see also Grant Guidelines at 5. Notably, Comcast sought confidential treatment for certain information in accordance with the grant guidelines and the Massachusetts Public Records Law. July 30, 2015, Letter from Alicia Matthews to Philip Holahan. Moreover, the information for which Comcast sought confidential treatment was not documentation of the company’s financial capacity, which is the information lacking from Matrix’s grant proposal, but was cost information such as average investment per home passed. Comcast Grant Application at 8.

⁶⁹ Grant Guidelines at 6 (emphasis added).

Matrix's financial capacity inescapably leads to a negative inference with respect to such financial capacity, particularly in light of the other sustainability concerns in the record.

In addition to the lack of tangible evidence that Matrix is financially capable of sustaining its proposed network, Matrix itself acknowledges throughout the record that its grant proposal is rife with risk:

- “[W]e will candidly admit that these two areas stretch the business plan close to its limits.”⁷⁰
- “The business plan in Hardwick is tight.”⁷¹
- “We are well aware that there is risk involved in both of these builds.”⁷²

Despite these risks, Matrix is confident that implementation of its proposal is “possible and can be sustainable.”⁷³ Despite this claim, when juxtaposed with Comcast's grant proposal, which does not involve a stretched business plan and carries minimal risk, it would be imprudent and unreasonable to fund Matrix's grant proposal with public dollars.⁷⁴

Matrix's apparent solution to its grant proposal's shortcomings is to expand its service area under the grant program to Petersham and to already-served portions of Montague and Hardwick in order to pass 1000 homes.⁷⁵ While this plan was apparently initially divulged in a January 13, 2016, in-person meeting with MBI, the details of the plan, including specific homes passed and projected take-rates are still not in the record.⁷⁶ In fact, Matrix submitted a proposed buildout in Montague and Hardwick more than two weeks after this in-person meeting, but the filing was devoid of any mention of overbuild, Petersham, or the necessity to pass 1000 homes.⁷⁷ Despite this lack of detail, I address the merits of Matrix's plan because, details notwithstanding, such expansion is problematic for a number of reasons. First, as was just alluded to, this plan appears to have been prepared extemporaneously without being fully developed.⁷⁸ This is significant because given Matrix's acknowledged need to pass 1000 homes to sustain its network, Matrix will lose money while it expands its network, even after passing the 362 unserved homes in Hardwick and Montague. There is no guarantee as to how quickly, if at all, Matrix could build out its network in a manner sufficient to pass 1000 homes, and it is at best unclear whether Matrix could withstand such financial loss in the interim. Second, while seeking to expand into the unserved territory of Petersham is a laudable undertaking, it is simply outside the scope of this grant program and would insert an additional dependency as a prerequisite to the success of the stated goal of the program—a dependency absent from the Comcast grant proposal. Petersham deserves a comprehensive, targeted broadband proposal that focuses on the town as a primary beneficiary as opposed to an ancillary beneficiary of a network

⁷⁰ January 21, 2016, Letter from Chris Lynch to Eric Nakajima at 2.

⁷¹ September 21, 2015, Letter from Chris Lynch to Elizabeth Copeland at 4.

⁷² September 21, 2015, Letter from Chris Lynch to Elizabeth Copeland at 4.

⁷³ January 21, 2016, Letter from Chris Lynch to Eric Nakajima at 2.

⁷⁴ *See* Written Comments of Charles Kelley (filed May 26, 2016).

⁷⁵ *See* MBI staff recommendation at 4.

⁷⁶ *See* Wipro Report at 3; MBI staff recommendation at 4.

⁷⁷ January 29, 2016, Email from Chris Lynch to Eric Nakajima.

⁷⁸ The Town of Petersham was not part of Matrix's originally proposed network or any formal Matrix response during the due diligence period.

intended for another purpose. And third, Matrix's proposal to overbuild Comcast's existing network in Hardwick and Montague is inappropriate for the public funding available through this grant. While competition in the broadband services market should absolutely be encouraged,⁷⁹ public monies should not be used to subsidize such competition at this stage of broadband deployment in Central and Western Massachusetts.

In sum, the record reflects that Comcast's financial capacity to build and sustain the broadband extension is far superior to that of Matrix.⁸⁰

Technical Capability

The record shows that Comcast's technical capability to deploy, sustain, and operate the broadband extension project is superior to that of Matrix. Comcast currently owns and operates residential broadband networks in myriad rural communities, including Montague and Hardwick. Much like its financial capacity, Comcast's technical capabilities to deploy and sustain the broadband extension project are beyond question.

In contrast, Matrix states that it has never operated a rural residential broadband network.⁸¹ The record makes clear that Matrix's areas of expertise are designing and building networks.⁸² Matrix clearly has extensive experience in these areas and has had success designing and building networks.⁸³ But while designing and constructing the network are no doubt important aspects of the broadband extensions program grant, they are not the only important aspects. Through the grant program, MBI is seeking the entity most qualified to design, build, operate, and maintain the broadband network extension.⁸⁴ Indeed, the grant guidelines state: "Prior successful completion of projects of similar scope and magnitude is of significant importance."⁸⁵ In contrast to Comcast, Matrix simply has not completed, sustained, and operated a project of similar scope and magnitude.

Moreover, Matrix failed to capitalize on MBI's willingness to address Matrix's lack of experience. Despite several requests, Matrix declined to provide MBI a detailed business operation

⁷⁹ See, e.g., Written Comments of Andre Pierre (filed May 26, 2016).

⁸⁰ The MBI staff recommendation faults Matrix's grant proposal because "no formal contracts or pricing have been agreed-upon" and Matrix's representations that the company would make the entire investment on its own "are not legally binding." MBI staff recommendation at 4-5. Matrix's assertions to MBI within and about its grant proposal should be taken as true on their face, while further informed by other relevant information in the record. See Grant Guidelines at 7. Indeed, there is no formal contract in place with any applicant at this stage in the process, nor is any representation of any applicant legally binding in the manner in which the MBI staff recommendation suggests. While the ultimate conclusion that the MBI staff recommendation reaches with respect to Matrix's financial capacity is supported by the record, MBI should be cautious when directly challenging the veracity of an applicant's assertions on the ground that there is no formal agreement in place with respect to such assertions.

⁸¹ Matrix Grant Application at Section 3.3 Key Questions.

⁸² Although not relevant to the merits of Matrix's grant proposal, even Matrix's tagline in its materials and on its website—"From Concept To Completion"—indicates that Matrix's business practice is in concept design and construction, and not in continued network operation.

⁸³ See Matrix Grant Application; April 18, 2016, Letter from Ron Cassel to Michael Baldino at Exhibit 2.

⁸⁴ Grant Guidelines at 3-4.

⁸⁵ Grant Guidelines at 3.

plan for its proposed network.⁸⁶ This is particularly concerning given Matrix's lack of experience in rural residential broadband network operation. Matrix claims that it offered to submit a proprietary business operation plan to MBI.⁸⁷ Matrix did provide a general business operations plan, but did not include any specifics.⁸⁸ MBI correctly stated that this general plan was "a skeletal description of how a new company might approach this project in general terms."⁸⁹ In response to this, rather than submitting a detailed business plan upon being given another opportunity, Matrix again failed to do so.⁹⁰ To date, the record remains devoid of a detailed Matrix business operations plan.

In brief, Matrix's lack of experience in operating and sustaining a rural residential broadband network, coupled with its failure to provide a detailed plan of how it would operate its proposed network leads to the conclusion that Comcast has demonstrated superior technical capabilities.

Conclusion

For the foregoing reasons I recommend that the MBI Board of Directors adopt the conclusion in the MBI staff recommendation because Comcast's grant proposal will provide the best value to Hardwick, Montague, MBI, and the Commonwealth of Massachusetts. Specifically, while Matrix proposes strong service offerings and cutting edge technology, and has demonstrated a strong commitment to community outreach, any related advantages over Comcast's grant proposal are outweighed by Comcast's superior financial capacity and technical capabilities and experience. Giving all due consideration and respect to the requests of the Montague and Hardwick Boards of Selectmen, Broadband Committees, and residents who commented publicly, the record demonstrates that MBI and the citizens of the Commonwealth whose money is at risk in this grant program cannot be sufficiently certain of the sustained success of Matrix's proposed network. Any incremental benefit that Matrix's fiber infrastructure and strong community coordination would provide is simply not worth the increased risk associated with Matrix's grant proposal.

I note that this recommendation is in no way meant to prevent, deter, or disqualify Matrix from providing broadband services in Hardwick, Montague, Petersham, or any other community in the Commonwealth of Massachusetts.⁹¹ In fact, Matrix's plans in surrounding communities should be applauded.⁹² Rather, this recommendation is strictly limited to MBI's task of awarding public funding available under the broadband extensions program grant. My hope and strong suggestion is that if the MBI Board of Directors chooses to accept this recommendation, MBI will work with Hardwick and Montague, the unserved residents of Hardwick and Montague, and Comcast during the grant negotiation process to attempt to reach a grant agreement under which Comcast will serve additional homes.

⁸⁶ See April 7, 2016, Letter from Michael Baldino to Ron Cassel at 1; January 27, 2016, email from Eric Nakajima to Chris Lynch; Written Comments of Jeff Singleton (filed May 26, 2016).

⁸⁷ See, e.g., April 18, 2016, Letter from Ron Cassel to Michael Baldino at 3.

⁸⁸ January 29, 2016, Email from Chris Lynch to Eric Nakajima.

⁸⁹ April 7, 2016, Letter from Michael Baldino to Ron Cassel at 1.

⁹⁰ April 18, 2016, Letter from Ron Cassel to Michael Baldino.

⁹¹ See Written Comments of Nancy S. Allen, Chair, Town of Petersham Office of the Selectboard (filed May 26, 2016).

⁹² See April 18, 2016, Letter from Ron Cassel to Michael Baldino at 9.

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While I am sensitive to comments regarding MBI's grant process, each applicant had a full and fair opportunity to present its grant proposal for the broadband extensions program grant and based on the record, common sense decision-making leads to the determination that the MBI Board of Directors should adopt the conclusion in the MBI staff recommendation to move forward to negotiate terms of a grant agreement with Comcast.

Sincerely,



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