

**Southside Network Authority  
Summary Minutes  
December 10, 2021**

The December 10, 2021 meeting of the Southside Network Authority (SNA) was called to order by Chair Susan Vitale at 2:04 PM. Chair Vitale thanked everyone for their attendance at the meeting and requested Mr. Robert Crum, HRPDC Executive Director, call the roll to determine Authority members' attendance.

**Southside Network Authority Voting Members in Attendance:**

Susan Vitale, Chair, CH	Albert Moor, SU
Andria McClellan, Vice-Chair, NO*	Daniel Jones, PO
Peter Wallace, Alternate VB	Catheryn Whitesell, Alternate NO

**Other Participants:**

Steven DeBerry, SNA Executive Director	Matthew DeHaven, CTC Technology & Energy
Robert Crum, HRPDC Executive Director	Mike Lockaby, Guynn, Waddell, Carroll & Lockaby, PC
Regina Chandler, Alternate SU	Kevin Rotty, PFM
Scott Fairholm, Alternate CH	

\*Indicates late arrival or early departure

**Others Recorded Attending:**

Andrew Fox, Fraser Picard (City of Norfolk); Kelsey Swieringa (City of Portsmouth); Karla Carter (City of Suffolk); Jay Stroman (City of Chesapeake) and Kelli Arledge, Chris Vaigneur (HRPDC Staff).

**Approval of the Agenda**

Chair Vitale called for a motion to approve the agenda. Ms. Catheryn Whitesell Moved to approve the agenda as presented; seconded by Mr. Daniel Jones. The Motion Carried.

**Public Comments**

Chair Vitale invited members of the public to address the Southside Network Authority. There were no public comments.

**Submitted Public Comments**

There were no submitted comments.

**Approval of the Minutes**

Chair Vitale called for a motion to approve the Minutes of the November 12, 2021 meeting of the Southside Network Authority. Ms. Whitesell Moved to approve the minutes; seconded by Mr. Jones. The Motion Carried.

## **Regional Connectivity Ring Project Update – Proposed Next Steps**

Mr. Steven DeBerry, SNA Executive Director, provided a project update and status report on the Regional Connectivity Ring (RCR). Mr. DeBerry reminded Authority members that at the November 12, 2021 meeting, the Board decided to work with the five Southside cities to finance and award a construction and maintenance contract for the RCR as well as enter into negotiations with one of the four proposers regarding a Public-Private Partnership (P3) that would operate, maintain and commercialize the RCR. Resolutions 2021-01 and 2021-02 were adopted at the last meeting.

Resolution 2021-02 directed the SNA Executive Director to negotiate bid extensions for construction and maintenance from the top two bidders (Cox and Danella) to ensure they are willing to extend their bids through January 15, 2022. Mr. DeBerry reported that both bidders agreed to extend their bids, including all material costs. This resolution also authorized the award of this contract upon securing funding from the five Southside member cities. He noted that he is working on a Phase II contract with CTC for construction oversight. A draft scope of work is being developed with a target date of approval set for January 14, 2022.

Resolution 2021-01 directed Mr. DeBerry to enter the detail phase of negotiations with Global Technical Systems (GTS) regarding a possible P3 to operate and market the RCR. Mr. DeBerry noted that he would need input from the Board about specific deal points, and once those points are clarified, negotiations with GTS can begin. More information about this would be forthcoming in the closed session.

Mr. DeBerry asked Mr. Lockaby to continue the presentation in order to provide a brief update on the project participation agreement. Mr. Lockaby noted the agreement follows the model laid out during the November meeting, and he has been meeting with the various city attorneys to get their comments and feedback on the agreement. He hopes to continue the conversations over the next few weeks and have another draft available. Noting the very tight timeline, Mr. Lockaby stated the goal is to have the agreement ready to present to city councils in January.

Mr. Lockaby said there are some very specific questions that he needs answered by the Board in order for him to appropriately draft the agreement. The first question relates to the “color of money” or where the money comes from. Mr. Lockaby reminded the Board members that there are challenges with funding the RCR with monies received by the cities from the American Rescue Plan Act (ARPA). ARPA money will probably add time and extra labor costs due to the need to execute change orders for a project labor agreement. Mr. Lockaby noted that it is better if the funding can be general fund monies so the SNA does not have to deal with ARPA labor issues and significant, additional red tape.

Mr. Jones inquired as to the amount of time it would add to the January 15th deadline if the funding was something other than cash/general fund monies. Mr. Lockaby stated that it should not have any impact on the January 15 timeline, but it would be the construction timeline that would be potentially lengthened.

Chair Vitale asked how long that timeline could be. Mr. DeHaven noted that they are trying to do as much of the engineering and environmental assessment work in parallel as possible to mitigate those challenges and get the approvals necessary before it has any impact; however,

that impact could be anywhere between no impact and six months, or more in some cases. Mr. Lockaby stressed to not let the type of money (e.g., ARPA, cash/general fund) delay getting the agreement done.

The second question posed by Mr. Lockaby was a request from the City of Portsmouth as it relates to the shares model where each of the cities has the opportunity to buy up to one-fifth of the total shares of the RCR in the first round, and then in a second round, a locality is able to buy more shares in the project. Mr. Lockaby noted that “shares” means how much of the project a particular locality owns and how much power a locality has over how the project works. Portsmouth has stated that it is a possibility that it may wish to come into the project with less than a 20% share with the understanding that it would have less voting power over the future of the project.

Portsmouth also has questions about the free access to the fiber in the ring. Mr. Lockaby explained that the way the agreement is currently structured, each of the cities that buys in at at least 20% gets automatic free access to six strands. Portsmouth’s position is that of the entire 119 miles of the RCR, only about eight or nine miles of the ring actually pass through the City. Their thought is that they would like to have the six free strands despite not having the full buy-in. As far as it relates to voting control over the project and the share of the revenue of the project, they would fluctuate with the shares as it would with any other locality, but they would get six strands free of charge. Mr. Lockaby asked for direction from the Board as to how they would like him to respond.

Ms. Whitesell noted that in prior discussion with the budget staffs, the buy-in and control would be proportionate. If a locality needs more strands later, they would need to buy in. As clarification, Chair Vitale inquired if the intention was to have the strand’s cost and control aligned with the percentage of share that was purchased. Therefore, if Portsmouth wanted to have full six strands under that model, they would be able to buy in with less than 20%, for example four strands, and if the City wants to have the full six strands, they have to purchase those in addition.

*Ms. McClellan arrives.*

Mr. Lockaby said it would not be the number of strands; it would be that the price would be inversely proportional to the number of shares bought to the 20%. For example, if 10% were bought instead of 20%, the City would pay half of the rate that is being asked on the market. Mr. Lockaby noted there would need to be some other arrangement, whether it was for four free strands rather than six, or whether Portsmouth would get all six free as a special case due to the City being relatively small in terms of the length of the fiber that would run through Portsmouth. Mr. Lockaby asked for input from Portsmouth’s representatives.

Mr. Jones noted that if a locality buys in at 20%, then it would have an equal share of voting power, revenues, etc. However, if it is less than the 20%, then the municipality would still be contributing but would basically be a customer. He did not understand the point.

Ms. Whitesell said that idea was that a locality would not get full access to the ring but would get proportionately lower access for its contribution. If a city needed more than that over time, it

would come in as a customer at that level. If another city needed more than their initial allocation of shares, they would buy additional strands.

Mr. DeBerry said he thinks there may be other options. This project began more than four years ago and it is all about a regional play in terms of continuity, economic development, etc. There are additional opportunities for further discussion. Hypothetically, if Portsmouth were to contribute \$3.5 million, perhaps the Board may determine that level of contribution is a full voting member, but you will not get a full share of revenue. The main concern now is that in January, the SNA wants to have enough money to make a construction award. Mr. DeBerry believes the bigger picture can be worked through, but currently the SNA has a contract bid for \$18 million in which there is exceptional material cost, labor cost, etc. that will not be there if delayed.

Mr. Jones stated there was a special crossing test that was identified within Portsmouth's boundaries. Mr. DeHaven concurred and noted those crossings were identified and there is special pricing associated with those types of situations. Mr. Jones noted that there will be excess capacity that is basically "just there" – it is not visible, it is attached to the bridge – so in essence, that special crossing is going to be at no cost. It will allow the SNA access across that route because that conduit is already there. There will not be a million-dollar cost to attach new conduit to that bridge.

Mr. DeHaven concurred and noted that the cost estimates generated did anticipate that. He stated that he thought Mr. Jones was inferring that one could look at that scenario as an in-kind contribution. Mr. Jones replied affirmatively. Mr. DeHaven said that it would be legitimate contribution in that sense, but clarified that was not included in the number CTC generated because they anticipated that crossing being supported in just that way.

Mr. Lockaby noted the agreement does call for an ability to take into account in-kind contributions and provides for a consulting engineer to provide for how the SNA would account for that in a way to keep it non-political. He also stated there are potential issues with the Wireless Service Authorities Act that the SNA would need to be careful with in terms of pulling through existing conduit.

Ms. Swieringa, Portsmouth Assistant City Attorney, acknowledged that it sounds as if there might be a solution to the access issue. Having options where, if contributing less than 20%, the City could choose to have six strands and pay the inverse proportion or have free access to less than six strands; that is something in which Portsmouth would be interested. Mr. Lockaby said that in drafting the agreement, such an option could be added.

Chair Vitale and Mr. Moor asked for more clarification between the two options as there does not appear to be any difference between the two. Ms. Swieringa noted, that as the agreement stands now, if Portsmouth contributes 10%, the City will have half as many voting rights and half as much share in the profits and costs. The City would then have to pay 50% of the cost to access six strands on the RCR. She is proposing to add an option to still have 50% voting rights, still have 50% share in profits and costs, but Portsmouth would have free access to half (three) of the strands. A reduced number of strands is Portsmouth's preference.

Mr. Lockaby noted the Roanoke Valley Broadband Authority and others have a term sheet, which is a set of guidelines that the board of directors has set, for how much they will normally lease dark fiber. If someone wants a one strand, you may pay more; if you want 30 strands, there may be a bulk discount. Per his conversations with Mr. DeHaven, Mr. Lockaby noted that a locality would not likely need more than six strands in the foreseeable future/next decade. Hence, six strands were the decided-upon amount that each locality would get for free for contributing 20%.

Mr. Jones noted that whether it is fewer pairs of strands or it is the same pricing but having the annual recurring payment or term sheet, Portsmouth is, in a sense, half a customer, but also half of the SNA. The City will be voting on items and paying on items and it becomes a complicated issue.

Ms. McClellan illustrated a similar arrangement with Hampton Roads Transit (HRT). She inquired if Portsmouth is resource-constrained and wants to pay for what it needs, but not pay for any extra? Ms. Swieringa replied affirmatively.

Mr. Fairholm inquired about the “recurring costs” that have been mentioned. Mr. Jones noted that as the agreement stands today, Portsmouth would have to pay half of what the remaining two strands would be even though they do not need them.

Ms. McClellan asked everyone to be mindful that the SNA is still in Phase I and the Board is setting precedent for future expansion. Mr. Fairholm noted that while understanding the precedent-setting components of the arrangement, at the last meeting it was mentioned that the Board would deal with this project one way, but as the RCR started to grow, investments in future projects would be considered separately.

Chair Vitale asked if the Board was willing to allow there to be another option within the agreement that permits a locality to purchase a certain number of strands – either two, four or six – and allows the locality proportionate control and revenue.

Mr. Moor suggested that option should have a floor to it because the SNA needs a certain amount of funding to start construction; \$3.6 should be the floor. Mr. Wallace agreed.

In summary, Chair Vitale stated that language could be added to the cost share model that a locality could have a reduced share, but that also means 1) reduced control and reduced revenue; 2) reduced strands (that can be done in pairs); and 3) a floor for buy-in.

Ms. McClellan noted that if \$18 million is the cost for construction, suggested buy-in is 2.5 shares, but the floor would be one share. Mr. Jones noted that if the floor is the contract price, that, in essence, is a full share. That makes everything previously discussed mute because each city still must buy a full share. Mr. Lockaby noted that \$1.8 million is half of a share of the construction costs.

Mr. Moor stated questions still remain on the work and the operating costs. He asked what the constants may be. Mr. DeHaven noted the predominant costs for dark fiber networks is actually in the location. Repairs are secondary and stated if location is done well in the beginning, it minimizes actual damages that may occur later. There are costs built into the estimates. Mr.

Moor asked if there was a proportionate share in that or is it the same for everyone? Mr. Lockaby stated that as it is currently structured, that goes into the annual budget, and if the annual budget sees a loss, then there is an availability fee; if the annual budget sees a surplus, then there is a distribution which happens quarterly.

Mr. DeBerry noted it is important to keep the Board's "eye on the prize." He continued noting that the ask for each city is \$5 million. However, if it is decided to split this amount, you still have an \$18 million construction bid. There will most likely be change orders. If the SNA does not come to an agreement with Cox, then Danella's bid would require the entire \$5 million from each city. The SNA needs \$18 million for it to safely sign the contract. Some of this may be able to be taken care of at a later date, but it is Mr. DeBerry's opinion that the Board should not move away from the \$5 million initially stated. If the Board moves away from that figure, it may mean that the SNA will need a bond or some other financing avenue.

For illustrative purposes, Ms. McClellan noted there are 25 shares and each city is expected to initially purchase five shares at \$1 million each or \$5 million total. Portsmouth may only be in a position to purchase two or three shares as opposed to five. The Board will then need to determine how to make up the remainder. Not all cities are going to be able to do all \$5 million immediately, but with that comes reduced revenue, reduced control, reduced strands. The SNA Board will then need to determine if there are any cities that want to pay for more.

Chair Vitale noted that if no city wants to purchase the extra shares, the SNA will need to get the shares filled. That may require financing at that point. Mr. Lockaby stated there is room in the agreement for this provision, but it is hopefully a last resort. However, if the SNA needs to borrow money to fill the gap, then the agreement would allow it to do so.

Chair Vitale called for a motion to solidify the next steps in drafting the agreement.

Mr. Moor Moved that:

- The Authority board would plan for a \$25 million initial valuation of the fiber project that would equate to 25 shares at \$1 million per share
- The floor for each locality to buy in would be at two shares or \$2 million
- For those localities who purchase less than the five shares, they would have a reduced voting share on the board, reduced revenue and access to fewer strands in proportion to the amount less than the 20% purchased

Seconded by Ms. McClellan.

Roll Call Vote:

Ms. Vitale	Yes
Ms. McClellan	Yes
Mr. Jones	Yes
Mr. Moor	Yes
Mr. Wallace	Yes

The Motion Carried.

Mr. Lockaby commented that it is extremely important that the localities provide him with comments from their city attorneys so that the agreement can move forward toward completion and can be presented to City Councils and the SNA for adoption in January.

Mr. Crum stated that the SNA does not want to lose its momentum in this race – a race that Hampton Roads is currently losing. Henrico County is being identified by international experts as a global internet hub because they have tapped into the subsea cables in Virginia Beach; the fourth largest data center has been constructed in the County; and they are beginning to aggressively market for this opportunity. Ms. McClellan agreed with Mr. Crum but noted her concern with the supply chain and human supply chain and Hampton Roads' ability to get this work done.

Mr. Jones asked that when this agreement is presented to the respective City Councils, does it trigger a public notice or public hearing? Ms. Whitesell responded that would depend on each locality's budget process and whether it would require an adjustment to their operating budget. She suggested that Authority members discuss this with their respective budget staffs.

Mr. DeBerry reviewed the expectations for the January 14, 2022 meeting:

- Approve Phase II contract with CTC for construction oversight
- Award/present contract to Cox for \$18 million
- Begin talks with GTS in late December/early January on the P3 aspect of this project

Mr. Moor asked if the individual cities need to execute the agreement by January 14th, noting that his locality needs to approve a resolution. Mr. Lockaby advised that the Authority should wait to make a formal contract until after it is sure it has the funding from the localities. Mr. Moor also asked if a resolution would be needed from the cities. Mr. Lockaby replied affirmatively that the cities generally need an authorizing resolution for the city manager or mayor to sign the contract or participation agreement. Ideally, these resolutions should be done by January 14th.

Chair Vitale asked for confirmation that the contract agreements expire on January 15, 2022. Mr. Lockaby confirmed and noted that the Authority would need to request another extension.

Ms. McClellan requested model language for the resolutions. Mr. Lockaby stated that he would be able to circulate the language to the city attorneys' offices by close of business, Monday, December 13, 2021.

Ms. McClellan asked if there is anything the Authority needs to be cognizant of as the 2022 General Assembly heads into session – are there any risks anticipated, and should the localities be advocating on any specific items? Mr. Crum noted that broadband is part of the HRPDC Legislative Priorities package, and he and Ms. McClellan will be meeting with the Hampton Roads General Assembly Caucus on these needs. Several members expressed that the Authority members should continue to find alternate sources of funding for broadband projects.

Ms. McClellan inquired if there are provisions in the contractual paperwork for something such as a true-up. Mr. Lockaby answered affirmatively.

Chair Vitale suggested if cities need or desire a briefing for a council work session, to please let Mr. DeBerry or Mr. Lockaby know as they will provide a briefing to council if requested.

### **Closed Session**

Chair Vitale called for a closed session and asked Mr. Lockaby to provide the language for the motion. Mr. Jones asked that city staff be allowed to participate in the closed session.

*Move to convene a closed session pursuant to subsection A.28 of § 2.2-3711 of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity; pursuant to subsection A.33 of § 2.2-3711 for the purpose of discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6; pursuant to subsection A.29 of § 2.2-3711 for the purpose of discussion of the award of a public contracting involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in open session would adversely affect the bargaining position or negotiating strategy of the public body; and pursuant to subsection A.6 of § 2.2-3711 for the purpose of discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected. This closed session will deal specifically with a confidential briefing regarding the dual-path strategy and financial considerations involved in construction and delivery of the Southside Regional Connectivity Ring, and more specifically, with the deal points for the public-private partnership detail phase of discussions.*

Ms. McClellan Moved to proceed in to closed session; seconded by Mr. Jones. The Motion Carried.

The Authority proceeded into closed session.

### **Return to Open Session**

*Ms. McClellan departs*

The Authority reconvened into open session. Mr. Lockaby read the following motion into the record:

*Move to reconvene in open session and to certify by roll call vote, pursuant to subsection D of § 2.2-3712 of the Code of Virginia, that (i) only public business matters lawfully exempted from the open meeting requirements of the Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed session was convened were heard, discussed, or considered in the closed session.*

Mr. Jones Moved to certify that only public business matters lawfully exempted from open meeting requirements as identified in the motion were heard, discussed or considered in the closed session; seconded by Ms. Whitesell.

Roll Call Vote:

Ms. Vitale	Yes
Ms. Whitesell	Yes
Mr. Jones	Yes
Mr. Moor	Yes
Mr. Wallace	Yes

The Motion Carried.

**Old/New Business**

There was no old or new business

**Adjournment**

With no further business to come before the Southside Network Authority, the meeting adjourned at 4:20 PM.