

MINUTES
FINGER LAKES REGIONAL TELECOMMUNICATIONS DEVELOPMENT CORPORATION
DbA AXCESS ONTARIO
BOARD OF DIRECTORS MEETING
September 19, 2014

Members Present:

John Sheppard, Chairman
Geoff Astles
John Dorak
Ed Hemminger
Michael Manikowski
Robert Seem
Camille Sorensen
David Smith
Mark Tolbert
Johnny Walker
Sean Barry, CIO

Members Absent:

John Garvey
Doug Mossbrook

Others Present:

Terry Phillips, Bonadio & Co. (by phone)
Helen Zamboni, Underberg & Kessler
Andy Lukaszewicz, Matt Crider and Jeff Gasper, ECC Technologies
Megan Connor Murphy, Dixon Schwabel

The September 19, 2014 meeting of the Board of Directors of the Finger Lakes Regional Telecommunications Development Corporation, dba Axxcess Ontario was called to order in the Ontario County Economic Development Conference Room, Mezzanine Level, County Municipal Building, 20 Ontario Street, Canandaigua, NY by John Sheppard at 1:30 p.m.

APPROVAL OF THE MINUTES:

The draft July 18, 2014 meeting minutes were corrected and completed to note that John Dorak was present, and that Bob Seem made every motion and Mike Manikowski seconded every motion. A motion to approve the minutes of the April 18 meeting and the July 18 meeting as corrected and completed was made by Ed Hemminger and seconded by Geoff Astles. Motion passed unanimously.

FINANCIAL UPDATE:

Terry Phillips reviewed the financials through July 31. He reported that under discussion with the auditors is whether the costs of building customer laterals should be capitalized or continue to be expensed. He will present at the next meeting the separate division report he has developed for the Yates County project and also updated projections for Axxess Ontario's P&L as a whole. He reminded the board that the budget for 2015 must be approved and loaded into the PARIS system by October 31. He will have a draft budget to the Finance Committee by October 10.

SALES AND OPERATIONS:

At 1:51p.m, a motion was offered by Ed Hemminger, seconded by John Dorak, to go into executive session for the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale of exchange of securities held by such public body but only when publicity would substantially affect the value thereof. Motion carried.

At 2:19 p.m., a motion was offered by Ed Hemminger, seconded by David Smith to leave executive session. Motion carried.

YATES COUNTY DISCUSSION

John Sheppard told the board about the discussions that have taken place over the last few months with elected members of the Yates County Legislature and staff of the county to address concerns of a number of legislators with respect to the proposed IRU agreement between Yates County and Axxess Ontario for the extension of the Axxess Ontario in Yates County (the "Yates Extension"). These concerns seem to be based on the assumption that Ontario County will be the "winner" if the Yates Extension is built. The Executive Committee met on September 11 to discuss the requests for changes to the IRU agreement made by Yates County and made recommendations for consideration by the full board, as reflected in the minutes of that meeting (attached) which were approved by the members of the Executive Committee.

John Dorak moved that the following resolution be adopted:

WHEREAS, the County of Yates (the "County") received a grant from New York State to establish an Open Access Model backbone network within the geographic bounds of Yates County (the "Network"); and

WHEREAS, the County and this Corporation have been negotiating the terms of a contract whereby this Corporation would construct, own, and operate the Network and grant an indefeasible right of use to 12 fibers of the Network to the County (the "Contract"); and

WHEREAS, this Corporation agreed to undertake engineering and design activities in connection with the development of the Network pursuant to a Reserve Agreement dated January 9, 2014 between this Corporation and the County (the "Reserve Agreement") on the belief that the Contract had been approved in principal by the County; and

WHEREAS, the County has requested material changes to the terms of the Contract, as follows:

(i) that this Corporation agree to separate accounting for the Network;

(ii) that this Corporation agree to be liable for any recapture of the grant pursuant to the terms of Exhibit E to the Grant Disbursement Agreement between the County and the State of New York;

(iii) that this Corporation agree that any "excess revenues" generated from sales of capacity on the Network be dedicated to the Network or paid over to the County;

(iv) that the County's representation on this Corporation's Board of Directors be increased from two to four individuals (or approximately 25% of the full Board); and

(v) that the County have the right at some future date to terminate the Contract should the Network be unable to generate sufficient revenue to cover its cost;

and

WHEREAS, the Executive Committee of the Board of Directors met on September 11, 2014 to review the County's requested changes to the Contract and the Executive Committee has reported its recommendations to the full Board of Directors at this meeting.

NOW, THEREFORE, BE IT RESOLVED, that the recommendations of the Executive Committee presented at this meeting are hereby approved; and be it further

RESOLVED, that the Chairman of this Corporation be directed to communicate the foregoing to the County; and be it further

RESOLVED, that any and all actions heretofore taken by the officers of the Corporation acting for and on behalf of the Corporation in connection with the transactions contemplated by the foregoing resolutions are hereby ratified, approved and confirmed in their entirety.

The motion was seconded by Johnny Walker and adopted unanimously.

A motion was offered by Mark Tolbert, seconded by David Smith to adjourn at 2:58 p.m. The motion passed.

Distribution:

All Board Members, present and absent
Ontario County Board of Supervisors
Clerk's Office, Board of Supervisors
John Garvey, County Administrator
Daryls McDonough, Deputy County Administrator
John Park, County Attorney
Cathy Bentzoni, County Finance Officer
Michael Wojcik, Economic Development