

**PRELIMINARY MERGER PLAN**  
**FOR**  
**NORTHEAST CENTRAL BROADBAND**  
**A MERGER OF**  
**NEK COMMUNITY BROADBAND**  
**AND**  
**CVFIBER**  
**PURSUANT TO 30 V.S.A. § 3082a**

The following is a Preliminary Merger Plan (the “Plan”) for NEK Community Broadband (“NEK”), a Vermont Communications Union District (“CUD”), and CVFiber (“CVF”), a Vermont CUD, which are merging together pursuant to Section 3082a of Title 30 of the Vermont Statutes.

This Plan is presented to the Governing Boards of NEK and CVF for approval by a three-quarters vote of a quorum of each Governing Board in accordance with Section 3082a(b)(2). Should the Governing Boards so approve this Plan, then further notices, a public hearing and a vote on a Final Merger Plan will take place over the next few months according to the process described below. After the Final Merger Plan is approved, the Merged CUD will (1) notify the Vermont Secretary of State, and (2) within 90 days of such approval, hold an initial organizational meeting (the “Organizational Meeting”).

Under this plan, and in compliance with the process set forth below, NEK and CVF will merge into one corporate entity, and NEK will be the surviving entity. NEK will continue operating as a Vermont Communications Union District under a new set of Bylaws, a draft of which is attached, and after the merger will do business as “Northeast Central Broadband” through an Assumed Business Name Registration with the State of Vermont. For the purposes of this plan, the merged entity will be referred to as the “Merged CUD.”

The Merged CUD will operate under two separate brands (“Brand Areas”) within the existing NEK and CVF service areas.

To date, the preparatory work to develop the Plan has been as follows:

- (1) Meetings among staff and Executive Committee members of both CUDs to discuss the possibility of and due diligence for a merger of NEK and CVF, including work by five different working groups to review governance, finances, operations, construction and communications.

- (2) Development of a process to merge NEK and CVF in accordance with Vermont law, including the Governing Board votes and public hearing detailed below.
- (3) Development of operating principles and the structure of the Merged CUD to best represent all members of NEK and CVF and address the entire range of their differing needs.
- (4) Due diligence by each of NEK and CVF to enable each organization to understand the finances, operations, assets and liabilities of the other, and best plan for their successful future in serving the needs of their combined service area.
- (5) Signing of a Merger Agreement between NEK and CVF to establish (a) the process for the merger, (b) their respective representations, warranties and covenants, (c) the immediate post-merger structure of the Merged CUD, and (d) the content of this Plan. By approving this Plan, the Governing Boards shall also ratify the Merger Agreement.
- (6) Outreach and planning necessary to call a meeting of each of the Governing Boards of NEK and CVF to vote on whether to approve the Plan.

#### **A. OPERATING PRINCIPLES OF THE MERGED CUD**

The Merged CUD shall conduct its operations in accordance with Vermont law governing the operations of CUDs, and in accordance with the following shared principles:

- (1) The Merged CUD shall be focused on ensuring that high-speed internet is available to every unserved broadband serviceable location in the merged district and public service to its constituent communities on an equitable and affordable basis. By doing so, the Merged CUD will ensure the economic and social prosperity of the counties where it operates.
- (2) The Merged CUD will be a locally managed, employee led, and community driven organization, in which every municipal member of the Merged CUD will have an equal voice in the priorities and decisions of the CUD.
- (3) Honesty, transparency and accountability will be a part of all of the Merged CUDs interactions with its customers and communities.
- (4) The Merged CUD will continue to have a grassroots efforts focus, emphasizing local input to strategy and decision making.
- (5) The Merged CUD's operational focus will be to provide reliable, superior service throughout its service areas and to proactively evolve to anticipate and meet future needs, while balancing affordability, sustainability and fiscal responsibility.

- (7) Digital Equity will be an important mission of the Merged CUD.

## **B. STRUCTURE**

### *Governing Board*

The Merged CUD will combine the 51 municipal members of NEK and the 20 municipal members of CVF into a single group of 71 municipal members, all of whom will be represented on the Governing Board as specified in the Bylaws.

The Governing Board will have ultimate authority for directing the operations of the Merged CUD, although day-to-day operations will be directed by the Executive Committee and Executive Director. However, only the Governing Board will have the authority to do the following:

- (1) amend the articles of incorporation and the Bylaws;
- (2) set the budget;
- (3) make any amendments to the budget exceeding the major purchase limits approved in the procurement policy;
- (4) hire and fire the Executive Director of the District; and
- (5) make major structural decisions, such as decisions that change the way the organization is going to operate, major branding changes, major pricing changes, major staffing changes, incur major unbudgeted debt exceeding the major purchase limits approved in the procurement policy, or vendor partnerships that would take on substantial work on behalf of the CUD.

As required by Section 3082a, the Governing Board shall have the Organizational Meeting within 90 days after the Governing Boards of NEK and CVF approve the Final Merger Proposal. After that, the Governing Board shall meet four times per year: for example, once in May for an annual meeting; once in October for preliminary approval of the budget; once in November for approval of the budget and once in February for a review of the previous year's accomplishments and the plans for the following year.

In addition, sub-sections of the Governing Board may meet to discuss items specific to each Brand Area and efforts to support their communities. For example, sub-sections may meet to discuss how to support town activities prior to Town Meeting Day in March and Election Day in September.

### *Executive Committee*

The Executive Committee of the Merged CUD will work with the Executive Director to manage the day-to-day operation of the Merged CUD in accordance with the Bylaws and an attached Executive Committee Charter. The initial merged Executive Committee will consist of the nine member NEK Executive Committee and seven member CVF Executive Committee, with the members as they exist immediately pre-merger.

The NEK Treasurer will serve as ex-officio member. The Executive Director and Treasurer of the Merged CUD shall attend meetings of the Executive Committee as non-voting members.

The specific individuals to sit on the Executive Committee shall be confirmed by the Governing Board of the Merged CUD at the Organizational Meeting. Afterwards, the composition of the Executive Committee shall be determined at each annual meeting.

The Executive Committee shall meet at least one time per month depending on the needs of the Merged CUD. The Executive Committee shall strive for consensus of all members by ensuring that all members have ample time to voice their opinions and any concerns.

#### *Finance Committee*

The Finance Committee shall be composed of 5-8 members of the Executive Committee, Governing Board, and/or residents of member towns with desired skill sets. The Executive Director and the Treasurer of the Merged CUD shall be members of the Finance Committee as non-voting members. The initial Finance Committee will consist of the four member NEK Finance Committee and the four member CVF Finance Committee. At least one representative from each Brand Area shall be on the Finance Committee. The Finance Committee is responsible for review of the financials on a monthly basis and approval of the financials on a quarterly basis for recommendation to the Executive Committee. The Finance Committee will meet no less frequently than once per month. The Finance Committee shall strive for consensus of all members by ensuring that all members have ample time to voice their opinions and any concerns. The initial Finance Committee shall be composed of the members of each CUDs Finance Committee.

#### *Other Committees and Working Groups*

The Governing Board or Executive Committee of the Merged CUD may authorize additional committees or working groups to address specific issues or policies as needed. The Merged CUD will have the following initial working groups:

- (1) Communication Working Group: Focusing on facilitating and constantly improving communications among the Merged CUD and its users, municipal members, the counties, other governmental entities, and other stakeholders.
- (2) Digital Equity Working Groups as needed: Focusing on ensuring that access to communications services provided by the Merged CUD are provided as broadly and equitably as possible and to maximize accessibility for all users.

### **C. MERGER PROCESS**

Should the Governing Boards of NEK and CVF approve this Preliminary Plan by three-quarters vote of a quorum of the Governing Board of each of the merging districts, the following steps will then take place within the next few months, concluding with the merger of NEK and CVF:

- (1) NEK and CVF will distribute copies of the Plan to the legislative bodies of their respective member municipalities not less than 45 days before holding a public hearing on the Plan.
- (2) NEK and CVF will arrange for notice of the public hearing by distributing such notice to their member municipalities, publicly posting such notice, and publishing notice in local newspapers and other paid media. These notices will be made no later than three days before the public hearing.
- (3) NEK and CVF will each hold a public hearing on the Plan.
- (4) NEK and CVF will schedule a Governing Board vote on the Final Merger Plan no less than 30 days after the public hearing.
- (5) NEK and CVF will distribute notice of the Final Merger Plan to each known creditor of their respective districts no less than 30 days before the vote.
- (6) NEK and CVF will appoint a joint committee to prepare the Final Merger Plan.
- (7) NEK and CVF's Governing Boards will vote on whether to approve the Final Merger Plan.

If the Governing Boards of NEK and CVF approve the Final Merger Plan by a vote of two-thirds of a quorum, the Final Merger Plan shall take effect immediately. At that point, NEK and CVF shall merge into a single Merged CUD. The Merged CUD shall have an Assumed Business Name Registration with the State of Vermont as "Northeast Central Broadband".

Section 3082a requires that the Organizational meeting be held within 90 days after the Final Merger Plan takes effect and that the Governing Board send notice of the merger to the Vermont Secretary of State. The Merger Agreement specifies the composition of the Governing Board, Executive Committee, and Finance Committee to be confirmed at the Organizational Meeting.

After the Organizational Meeting, the composition of the Governing Board, Executive Committee, Finance Committee and other committees shall be determined by the Bylaws of the Merged CUD.

#### **D. EFFECT OF THE MERGER**

After a vote of approval of the Final Merger Plan CVF will cease to be an independent entity, merging into NEK to create the Merged CUD. The Merged CUD shall possess all the rights, privileges, immunities, powers and purposes of each of CVF and NEK and 30 V.S.A. Chapter 82.

Each municipal member of NEK and CVF shall automatically and without further action become a member of the Merged CUD after the merger and shall retain all rights of its membership in a Communications Union District and under the Bylaws, including having a seat on the Governing Board as mentioned above.

The Merged CUD shall succeed to all assets, rights, liabilities, and contracts of NEK and CVF, and shall satisfy or assume all of their obligations. Specifically:

- (1) All assets of whatever kind, owned, claimed, or held by each district shall become vested in and become assets owned by the Merged CUD without any further act, deed, or instrument being necessary. Contract rights possessed by NEK and CVF (and all attendant obligations) shall vest in the Merged CUD without reversion or impairment.
- (2) The Merged CUD shall assume and be obligated to pay or otherwise perform each and every lawful obligation, debt, claim, bonded indebtedness, and other liability of NEK and CVF without any further act, deed, or instrument being necessary.
- (3) The Bylaws attached to the Final Merger Plan shall go into effect as the Bylaws of the Merged CUD.

The following consents and notices are anticipated to be required as a result of the merger, which shall be pursued either before approval of the Final Merger Plan or afterwards, as appropriate:

- (1) Consents by counterparties of CVF contracts and grantors of grants received by CVF, if required to allow for the merger.
- (2) As CVF holds a Certificate of Public Good from the Vermont Public Utility Commission as a non-dominant provider of communications services, post-merger notice within two weeks of approval of the Final Merger Plan.

No other consents from governmental or private entities are anticipated, but it is possible such consents may be discovered after approval of this Plan. If so, such consents shall be obtained before the Governing Boards are asked to approve the Final Merger Plan.

#### **E. MERGER AGREEMENT**

The Merger Agreement in no way obligates either of the Governing Boards or any of their member municipalities to make any specific decision regarding the merger. Rather, it provides a way for NEK, CVF, their Governing Boards, their municipal members, and all other stakeholders to understand their rights and obligations. Specifically, the Merger Agreement provides for the following regarding the effect and process of the merger:

- (1) Agreement by NEK and CVF regarding their respective rights and obligations during the merger process and regarding the effect of the merger as outlined above.
- (2) Representations and warranties by each of CVF and NEK regarding their current status. These representations and warranties allow each of the parties to understand the assets, liabilities and obligations that will pass to the Merged CUD, and provide

a baseline set of assumptions about the status of each party that is a necessary precondition to the merger.

- (3) Covenants by each of them as to how they will (a) cooperate with one another to complete the merger, if approved by the Governing Boards and (b) preserve their operations until the merger is completed.

The Merger Agreement also provides that, after the merger, understanding the post-merger structure outlined above shall be an ongoing obligation of the Merged CUD and, until the first annual organizational meeting of the Merged CUD, may be enforced by any municipal member.

The Merger Agreement may be terminated (1) at any time by mutual written consent authorized by the Governing Boards, (2) by either party if the other party has breached any of the representations, warranties, obligations, covenants or agreements of the Merger Agreement and the breach is not cured within fifteen (15) days after notice, or (3) by either party if the merger has not been completed by October 1, 2024.

## **F. CONTACTS**

Municipal members and other stakeholders will have questions during the process, and during the time this Plan is developed by a joint committee of NEK and CVF into a Final Merger Plan. Members and stakeholders are encouraged to speak amongst themselves, contact NEK and CVF, and provide feedback and ask questions. Please direct all input and questions to the following contacts for NEK and CVF:

CVF:            preliminarymerger@cvfiber.net  
NEK:            preliminarymerger@nekbroadband.org

**ATTACHMENT 1 TO THE PRELIMINARY MERGER PLAN OF  
NEK COMMUNITY BROADBAND**

**AND**

**CVFIBER**

**Revised Bylaws**



# GOVERNING BOARD BYLAWS

## SECTION 1. PURPOSE

Whereas, NEK Community Broadband dba Northeast Central Broadband (the “District”) has satisfied the requirements of said Act to qualify as a Communications Union District (“CUD”), and whereas, in accordance with 30 V.S.A. § 3082a, CVFiber has been lawfully merged into the District, therefore the District Governing Board (the “Board” or “Governing Board”) shall exist for the purpose of carrying out the roles and responsibilities described in said Act or any subsequent amendments.

**SECTION 2. TERMS AND NAME.** The District has submitted an Assumed Business Name Registration with the State of Vermont to do business as Northeast Central Broadband. As used herein, the term Town shall be understood to mean any member Town or City, and the term Select Board shall similarly imply either a Select Board or City Council, as appropriate. The term Brand Area shall refer to the areas originally covered by each of the District’s two brands as depicted at Appendix A to these Bylaws.

**SECTION 3. ORGANIZATION.** The District Governing Board consists of the delegates as appointed by the Select Board of each District member Town. The Select Board of each member Town shall appoint a primary delegate and one or more alternate delegates. Each such duly appointed delegate becomes a member of the Governing Board by presenting a letter of appointment from his or her Town’s Select Board effective upon notification of the appointment being received by the Clerk and accepted by the Board. Each such duly appointed delegate is required to sign a confidentiality agreement and to disclose any known potential conflicts.

**SECTION 4. REGULAR MEETINGS.** The Governing Board shall hold its annual organizational meeting on the second Thursday in May. In addition, the Board will establish a schedule of four regular meetings per year of the Board. The election of Executive Committee members and Officers shall occur at the annual organizational meeting.

**SECTION 5. SPECIAL MEETINGS.** Special Meetings of the Board may be called at any time by the Chair, or shall be called by the Clerk upon written request of members of the Board representing the lesser of either (a) a majority of the member Towns or (b) twenty (20) Towns. Except in case of emergency, each member of the Board shall be given at least 24 hours’ notice of any special meeting in accordance with the Vermont Open Meeting Law.

**SECTION 6. QUORUM.** For the purpose of transacting business, the presence of delegates representing more than 50 percent of the votes then eligible to be cast, shall constitute a quorum.

**SECTION 7. RULES OF PROCEDURE.** Except as otherwise provided by law, or as may be agreed upon by the Board, Robert’s Rules of Order shall govern at all meetings.

**SECTION 8. VOTING.** Each member Town shall be entitled to cast one vote by a delegate present. Except as otherwise provided herein, or in the Enabling Legislation, a majority of the votes cast shall be required to approve any action.

**SECTION 9. TERMS OF OFFICE.**

Governing Board: The member Town delegates who make up the Board shall each be appointed by their Select Boards to serve for one year, from one annual meeting to the next, or until their successor is duly appointed.

Executive Committee: Executive Committee members shall be elected for staggered terms of 3, 2, and 1 years respectively. Executive Committee members shall be eligible to be reelected to successive terms without limit.

Officers: The Chair and Vice Chair shall be elected to such officer position for 1-year terms and are eligible to be reelected to successive officer terms without limit.

**SECTION 10. ELECTION OF EXECUTIVE COMMITTEE AND OFFICERS.** The Board annually shall elect from among its members a Chair, Vice-Chair, and, as needed, at-large members of the Executive Committee. The Chair and Vice Chair shall be from different Brand Areas unless one or the other Brand Area does not put forth a candidate. The Board may also elect other Executive Committee members, as it deems appropriate, for the conduct of its business.

**SECTION 11. CHAIR.** The Chair shall preside at all meetings of the Board and Executive Committee. The Chair shall also perform the entire duties incident to the position and office.

**SECTION 12. VICE CHAIR.** During the temporary absence or inability of the Chair to perform their duties, the Vice Chair shall perform such duties. If the vacancy becomes permanent due to death, disability, resignation or removal, the Vice Chair shall serve as acting Chair until the vacancy is otherwise filled by the Governing Board or until the next annual meeting, and a new acting Vice Chair shall be selected by the Executive Committee to fulfill the duties of the Vice-Chair role on a temporary basis until confirmed at the next Governing Board meeting.

**SECTION 13. CLERK.** The Clerk shall be elected annually by the Governing Board and may be a voting member of the Executive Committee. The Clerk may, or may not, be a member of the Governing Board. The Clerk shall execute all duties assigned to the Clerk by the Enabling Legislation. They shall have custody of the public records of the District and shall record all votes and proceedings of the District, including meetings of the District and meetings of the Governing

Board. The Clerk shall also prepare and warn all meetings of the Governing Board in accordance with Vermont law and shall cause the annual report approved by the Governing Board to be distributed to the legislative bodies of the member municipalities. The Clerk shall also perform all the duties and functions incident to the office of a Clerk or clerk of a body corporate.

**SECTION 14. TREASURER.** The Treasurer shall be appointed annually and as needed by the Executive Committee and shall be an ex-officio, non-voting member of the Executive Committee and Finance Committee. The Treasurer may not be a member of the Governing Board. The Treasurer shall have the custody of the funds of the District and shall be the disbursing officer of the District. When authorized by the Governing Board, the Treasurer shall sign, make or endorse in the name of the District all checks and orders for the payment of monies as may be required to carry out the business of the District, as well as any and all valid contracts to which the District is a party, and pay out and disburse the same.

**SECTION 15. EXECUTIVE COMMITTEE COMPOSITION.** The Governing Board shall elect from its membership an Executive Committee consisting of up to 16 representatives and no less than 9 representatives. The original Executive Committee shall be comprised of the full Executive Committees of each of the Brand Areas. The Executive Committee shall assign from within its ranks two members of the Finance Committee, one from each Brand Area. The Executive Committee may assign from within its ranks two Brand Area ambassadors, one from each Brand Area. The Executive Committee may assign from within its ranks two Digital Equity Champions. Each county with more than one member shall be represented on the Executive Committee by at least one member from the county. In addition, the Treasurer and Executive Director are ex-officio, non-voting members.

At all meetings of the Executive Committee, a majority of the full number of voting members of such Committee shall constitute a quorum. All completed actions by the Executive Committee shall be reported for discussion to the Governing Board at its next meeting succeeding such action. At that meeting, the Governing Board shall affirm receipt and confirm no revision or alteration to such report, or append comments. The actions shall be subject to revisions or alterations by the Governing Board, provided that no acts or rights of third parties shall be affected by any such revision or alteration.

The Executive Committee shall strive for consensus of all members by ensuring that all members have ample time to voice their opinions and any concerns.

**SECTION 16. GOVERNING BOARD AND EXECUTIVE COMMITTEE POWER AND AUTHORITY.** During the intervals between the meetings of the Governing Board, the Executive Committee shall possess and may exercise all the power and authority of the Governing Board (including, without limitation, all the power and authority of the Governing Board in the management, control and direction of the financial affairs of the District) except with respect to those matters reserved to the Governing Board, in such manner as the Executive Committee shall deem best for the interests of the District, in all cases in which specific directions shall not have been given by the Governing Board.

The matters reserved to the Governing Board include the power to (1) amend the Articles of Incorporation and these Bylaws; (2) set the budget; (3) make any amendments to the budget exceeding the major purchase limits approved in the procurement policy; (4) hire and fire the Executive Director of the District; (5) incur major unbudgeted debt exceeding the major purchase limits approved in the procurement policy; and (6) make major structural decisions, such as decisions that change the way the organization is going to operate, major branding changes, major pricing changes, major staffing changes, or vendor partnerships that would take on substantial work on behalf of the CUD.

**SECTION 17. VACANCY.** If the absence or inability of any of the Executive Committee members to perform their duties or exercise his or her powers becomes permanent due to death, disability, resignation or removal, the Board shall elect replacement(s) from among its membership. Executive Committee vacancies shall be filled as soon as practical after proper notice, by election at the next regular or special meeting of the Governing Board.

**SECTION 18. RECORDS.** The conduct of all meetings and public access thereto, and the maintaining of all records, books and accounts of the District shall be governed by the laws of this State relating to open meetings and accessibility of public records. Governing Board members, having an absolute right to access to any District record, shall not be subject to any fee that might otherwise be levied under open meeting regulations. Similarly, any materials deemed to be non-public, with the exception of personnel records, shall be made available to any Governing Board member upon request at no charge.

**SECTION 19. AUDIT.** The Governing Board shall cause an audit of all District accounts to be performed annually by an independent professional accounting firm or a certified public accountant.

**SECTION 20. OTHER COMMITTEES** As provided in the Enabling Legislation, the Governing Board may choose to establish other committees at its discretion for the purpose of advising the Governing Board and Executive Committee. Membership in such committees is not limited to Board members. The Finance Committee shall consist of 5-8 members and be responsible for the audit and review of the District financial statements.

**SECTION 21. REIMBURSEMENT OF OFFICERS.** Any Officer or Member of the Executive Committee shall be reimbursed for documented out-of-pocket expenses incurred in the discharge of their duties hereunder, as may be authorized by policies established by the Governing Board.

**SECTION 22. REMOVAL OF OFFICERS.** Any member of the Executive Committee may be removed by a two-thirds vote of the Governing Board (rounded up to the nearest whole number) whenever, in its judgment, the best interest of the District will be served thereby.

**SECTION 23. CONDUCT OF MEETINGS.** To the fullest extent permitted by law, the Governing Board and all committees shall be allowed to meet, transact business, provide notice and communicate by electronic and telephonic means.

**SECTION 24. INSURANCE AND INDEMNIFICATION.** To the fullest extent afforded by law, including procuring and maintaining insurance through commercial carriers or municipal risk retention groups with limits in such amounts as the Governing Board shall deem sufficient to cover foreseeable risk, the District shall indemnify and defend its Governing Board and its officers from claims allegedly arising out of actions and omissions arising in such capacity.

**SECTION 25. CONFLICTS OF INTEREST.** The Governing Board shall adopt a conflicts of interest policy, which shall be binding upon Governing Board members and all District Officers.

**SECTION 26. AMENDMENT.** Amendments to these Bylaws must be proposed and warned by written notice to all members before or at a regularly scheduled meeting of the Board, and to become effective, must then be adopted by two-thirds of members present and eligible to vote at the next regularly scheduled Board meeting no less than three weeks later.

**SECTION 27. SAVINGS/SEVERABILITY.** If any term or provision of these Bylaws shall be invalidated, such action shall not affect the balance of these Bylaws.

ATTEST: \_\_\_\_\_ Date:

# EXHIBIT A TO GOVERNING BOARD BYLAWS

## BRAND AREAS

