



February 8, 2021

Chairman Briglin  
Vermont House of Representatives  
House Energy and Technology Committee

Dear Chairman Briglin:

On behalf of the Independent Telephone and Broadband Companies of Vermont (the "Independents"), thank you for the opportunity to comment on broadband deployment status and developments in Vermont. Our time ran short before I had a chance to speak directly to the draft bill currently under consideration in Committee. I submit these comments for the Committee's consideration and am happy to come back and discuss these comments in greater detail.

The Independents have been serving Vermont for over 100 years. We are committed to universal service and continue to serve all customer in our service territories who have not picked an alternative carrier. Our networks have been built to serve all customers and are available to for any and all that live in our service territories. We are Eligible Telecommunications Carriers (ETCs) for federal and state regulated voice service. The same lines carry our broadband service. In addition to being long time local providers, we are local businesses that supports our local communities. We build networks, will continue to do so, and can build to more locations immediately with additional funding.

#### General Comments

First, the Independents' status as carriers or providers of last resort was discussed. To be clear, as providers of last resort under federal and state law, Vermont's eligible telecommunications carriers presently receive federal and state universal service funding. These programs represent public-private partnerships that enable providers of last resort like the Independents to construct broadband-capable networks to reach unserved and underserved locations in their rural Vermont communities and to then deliver high-quality voice and broadband services that are more affordable and keep pace with consumer and business demand in these areas. This includes the Connect America Fund (CAF) at the federal level and the Vermont Universal Service fund in the state.

Even as broadband has become even more vital to Vermonters' daily life and as the costs of deployment continue to rise to keep pace with increased demands for higher speeds, public funding for broadband deployment and the sustainability of such services has remained flat or even been reduced through cuts in federal support. While we continue to make strides in delivering the highest levels of service to every consumer in our serving areas and still have some work to do as we strive to edge out better levels of broadband as quickly as possible, we have state obligations to deliver voice to every customer in our area and we are also under federal mandates to deliver increasingly higher speeds of broadband to more customers over time. In many cases we have surpassed those minimum federal obligations.

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Indeed, we spoke to the obligation as carriers of last resort to nevertheless continue to provide service to all customers in our territories; this is an obligation that is not shared by other providers. The need to maintain our networks for the benefit of all, while competitors can pick and choose the areas and customers they want to serve (including many of the largest customers that generate the greatest revenue), places additional strains on providers of last resort and burdens on our remaining customers (often in the most rural areas) that the competitors do not see fit to serve. Lack of federal and state support for these high-cost areas of the State only exacerbates that challenge, and makes investments in broadband even more challenging.

With this as backdrop, and turning to the draft legislation under consideration, the Independents are concerned about the lack of parity and equity in the proposed treatment of providers of last resort. We are also concerned that, in its current form, the bill could undermine the good work of the federal and state universal service programs by failing to coordinate with those initiatives as they obligate existing providers of last resort to extend broadband service further. In short, the bill would favor Communications Utility Districts (CUDs) to the detriment of other providers like the Independents who have similar obligations and similar goals, in addition to including some other questionable policy proposals. To address such concerns, we provide specific comments below on the draft legislation in several key respects:

- eliminate the transfer of the State's fiber-optic assets to CUDs so as to use avoid using state-owned assets in a discriminatory manner
- restore control of the Connectivity Initiative to the Department of Public Service
- restore the existing eligibility for the Connectivity Initiative, as well as for VEDA's Broadband Expansion Program, to all broadband providers and not just the CUDs, and
- eliminate the provision that gives CUDs a role in any Section 248a communications facility siting approval proceedings

Specific suggested edits follow in Attachment A. If you have any questions or require further information, the Independents welcome the opportunity to meet with the House Energy and Technology committee at your convenience. I can be reached at [rnishi@corp.wcvt.com](mailto:rnishi@corp.wcvt.com) or (802) 496-8336.

Sincerely,



Roger Nishi  
Vice President Industry Relations  
Waitsfield and Champlain Valley Telecom

Attachment A

**Specific edits to the bill language to address and implement these recommendations follow below:**

Specific to the Bill

FIRST: Sec. 1 Findings and Intent – subsection (b)

(6) directing **additional** public resources to the development of **public** broadband assets intended to provide universal access;

(7) developing favorable taxing, financing, and regulatory mechanisms to support **communications union districts broadband connectivity projects**; and

Purpose: Intended to make these findings provider-neutral.

SECOND: Sec. 2. Vermont Community Broadband Authority

The Independents suggest the Committee not create a new Authority for this purpose. The time, money and resources necessary to do so seems counterproductive to the effort to deploy broadband connectivity projects to unserved and underserved populations in a timely and efficient manner.

THIRD: Sec. 2 - § 8085. GENERAL POWERS AND DUTIES – subdivision (3)

~~(3) transfer State fiber optic assets to the communications union district in which those assets are located~~

Purpose: State-owned assets should remain at the State level and be made available to all providers on a non-discriminatory basis. Any conveyance of State-owned fiber assets should produce revenues that will fund broadband programs to reach unserved and underserved locations in Vermont.

FOURTH: Sec. 2 - § 8085. GENERAL POWERS AND DUTIES – subdivision (5)

~~(5) consult with agencies and departments regarding the establishment or modification of taxes and fees applicable to broadband providers, including the establishment of criteria for the waiver of such taxes and fees when providers offer to furnish comparable value to the State to meet the public good;~~

Purpose: Authorizing a state agency to influence changes in taxes and fees to benefit a special-interest subset of providers will create tax inequities. The same “inherent tension” that the Department faces as a regulator and as a project developer would apply here.

## FIFTH: Sec. 2 - § 8085. GENERAL POWERS AND DUTIES – subdivision (9)

(9) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter;

Purpose: Giving the VCBA rulemaking authority over matters such as pole attachments is certain to create conflicts with the PUC's existing rulemaking authority (see, e.g. PUC Rule 3.700—Pole Attachments).

## SIXTH: Sec. 4 – TRANSFER OF ASSETS

**On or before July 1, 2021, the Department of Public Service shall transfer ownership of its fiber-optic assets to the communications union district in which those assets are located. The transfer shall include a requirement that, upon the dissolution of a communications union district, any such fiber assets shall become the property of the State to be managed by the Vermont Community Broadband Authority or the Department of Public Service if the Authority no longer exists.**

Purpose: State-owned assets should remain at the state level and should be made available to all providers on a non-discriminatory basis. Any conveyance of State-owned fiber assets should produce revenues that will fund broadband programs to reach unserved and underserved locations in Vermont without discrimination as to technology or provider.

## SEVENTH: Sec. 8 – § 7515b CONNECTIVITY INITIATIVE – subsection (a)

(a) **The Connectivity Initiative shall be administered by the Vermont Community Broadband Authority.** The purpose of the Connectivity Initiative is to provide each service location in V

Purpose: Retains jurisdiction and authority over the Connectivity Initiative with the Department of Public Service.

## EIGHTH: Sec. 8 – § 7515b CONNECTIVITY INITIATIVE – subsection (b)

(b) **The Department of Public Service shall publish annually a list of census blocks E-911 locations eligible for funding based on the Department's most recent broadband mapping data. The Department Vermont Community Broadband Authority annually shall solicit proposals from service providers communications union districts to deploy broadband to eligible census blocks E-911 locations. Funding shall be available for [capital improvements only, not for operating and maintenance expenses]. The Department Authority shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department Authority also shall consider:**

Purpose: Maintains that grants and awards from the Connectivity Initiative are provider-neutral and not solely directed to one provider. There are also conforming amendments here and needed elsewhere to retain authority of the Connectivity Initiative to the Department of Public Service.

## NINTH: Sec. 9 - § 280ee. BROADBAND EXPANSION LOAN PROGRAM – subsection (a)

(a) Creation. There is established within the Authority the Vermont Broadband Expansion Loan Program (~~the Program~~), the purpose of which is to enable the Authority to make loans ~~to~~ **communications union districts** that expand broadband service to unserved and underserved Vermonters.

Purpose: Maintains that loans from VEDA remain provider-neutral and not solely directed to one provider.

## TENTH: Sec. 9 - § 280ee. BROADBAND EXPANSION LOAN PROGRAM – subsection (c)

(c)(1) Requirements. The Authority shall make loans for start-up and expansion that enable the **Internet service providers** ~~communications union districts~~ to expand broadband availability in unserved and underserved locations.

(2) The Authority shall establish policies and procedures for the Program necessary to ensure the expansion of broadband availability to the largest number of Vermont addresses as possible. The policies shall specify that:

(A) loans may be made in an amount of up to ~~\$4,000,000.00~~ \$8,000,000.00;

(B) eligible borrowers include communications union districts **and other units of government, nonprofit organizations, cooperatives, and for-profit businesses**;

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(F) the **provider** ~~communications union district~~ shall offer to all customers broadband service that is capable of speeds of at least 100 Mbps symmetrical.

Purpose: Maintains that loans from VEDA remain provider-neutral and not solely directed to one provider.

## ELEVENTH: Sec. 11. FISCAL YEAR 2022 ONE-TIME GENERAL FUND APPROPRIATION

To the Vermont Economic Development Authority, \$1,260,000.00 is appropriated to serve as loan reserves to administer the Broadband Expansion Loan Program and to enable the Authority to provide credit enhancements to assist ~~communications union districts~~ **broadband service providers** with securing financing through other lenders.

Purpose: Provides that the one-time appropriation is provider neutral and not solely appropriated to one provider.

TWELVTH: Sec. 14. CUD; Public Records Act; Trade Secret Exemption; Clarification

**§ 3084. CONFIDENTIALITY; LEGISLATIVE INTENT**

**~~The purpose of this section is to clarify that any records or information produced or acquired by a district that are trade secrets or confidential business information shall be exempt from public inspection and copying pursuant to 1 V.S.A. 317(e)(9). Such records or information shall be available for public inspection after project completion.~~**

Purpose: Statutory confidentiality for CUD records and information creates a regulatory mismatch compared to other broadband providers that must petition the PUC or the courts for confidential protection under a high standard that favors public disclosure. The special confidentiality protections given here will also create risks that actions, such as financial malfeasance, will escape public scrutiny.

THIRTEENTH: Sec. 15a. Electric Distribution Utilities; Broadband Infrastructure; CUD Lease; Property Tax Exemption

(19) Real and personal property, except land, owned by an electric distribution utility that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is leased to a ~~communications union district~~ broadband service provider for the purpose of providing broadband service. This exemption applies only to broadband infrastructure constructed on or after July 1, 2021.

Purpose: Provides that any tax exemption is provider neutral and not solely available to one provider.

FOURTEENTH: Sec. 15a. Electric Distribution Utilities; Broadband Infrastructure; CUD Lease; Property Tax Exemption

(20) Real and personal property, except land, owned by a broadband provider that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is used for the purpose of providing universal broadband service in unserved and underserved areas, is constructed on or after July 1, 2021, ~~and further provided this purpose is affirmed in writing by:~~

~~(A) The Department of Public Service.~~

~~(B) Any affected communications union district. As used in this subdivision, “affected communications union district” means a district in which the broadband infrastructure project is located.~~

Purpose: It is not appropriate to give CUDs any control over their competitors’ ability to claim a tax exemption. Giving the Vermont DPS such control constitutes impermissible state regulation of broadband services.

FIFTEENTH: Sec. 15e. § 3851. BROADBAND INFRASTRUCTURE – subsection (b)

(b) As used in this section, “broadband infrastructure” means:

(1) Real and personal property, except land, owned by an electric distribution utility that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is leased to a ~~communications union district~~ broadband service provider for the purpose of providing broadband service, and further provided the broadband infrastructure is constructed on or after July 1, 2021.

(2) Real and personal property, except land, owned by a broadband provider that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided:

(A) the infrastructure is used for the purpose of providing broadband service in unserved and underserved areas;

~~(B) the purpose required in subdivision (A) of this subdivision (b)(2) is affirmed in writing by both the Department of Public Service and any affected communications union district;~~ and

(C) the infrastructure is constructed on or after July 1, 2021.

Purpose: Provides that any tax exemption is provider neutral and not solely available to one provider. And further, it is again not appropriate to give CUDs any control over their competitors’ ability to claim a tax exemption. Giving the Vermont DPS such control constitutes impermissible state regulation of broadband services.

SIXTEENTH: Sec. 18. 248a; Telecommunications Facility Siting; Notice; CUDs

(e) Notice. ~~No~~ Not less than 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Commission pursuant to this section to the ~~communications union districts~~, legislative bodies, and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; ...

Purpose: Giving CUDs a statutory role in the licensing and siting of their competitors’ facilities creates a conflict of interest that should be avoided.