

To: Senate Finance
From: Christa B. Shute, Esq.
Date: April 16, 2021
Re: Bridging the digital divide using public infrastructure

Chair Senator Cummings and Senate Finance Committee Members,

My name is Christa Shute. I grew up in the Northeast Kingdom, and moved to Stowe for high school. I am an attorney in Vermont and New Hampshire. In Vermont, two of my clients are Communications Union Districts: NEK Broadband and CVFiber. In New Hampshire, I am the Staff Attorney for the Office of the Consumer Advocate in front of the Public Utility Commission. My testimony today reflects only my own views; it does not express the views or opinions of my employer or my clients.

I joined the Vermont Telecommunications Authority in 2009 and stayed there until shortly before the VTA was shuttered in 2015. I was the Director of Business Development and Finance at the VTA with a primary focus on cellular and the development of the state-owned fiber infrastructure projects. I was the key negotiator in the Northeast Kingdom Fiber Network of 175 miles, the Central Vermont network of over 150 miles, and the roughly 15 miles built in Putney.

These fiber projects are an example of the public infrastructure that is so critical to the most rural areas of our State. They were built with public federal and state tax dollars that leveraged private investment. The fiber infrastructure was built with 144-strand fiber so that it could accommodate multiple service providers. With the closure of the VTA, the infrastructure is currently owned by the State, operated by the Public Service Department. With Senate approval of the provisions in House Bill 360, the ownership of the fiber will transfer to the Communications Union Districts (CUDs) in each of those areas. The CUDs are each well suited to make the best use of those investments for Vermonters. The investment of those public dollars produced public infrastructure that can be used by these bodies politic for the public good. Funds were not, by contrast to other VTA projects, granted to a single internet service provider (ISP) that then unilaterally controls the infrastructure.

In our most unserved and underserved areas we can only afford to build long lasting infrastructure once. We have, as we all know, a once in a generation opportunity to do just that. For the last few years, we have desperately tried to get people service without a strategy. Money has been invested in private companies to get paltry service that today isn't even considered high-speed broadband. When we invest only in private companies in our most rural areas we create a complete monopoly in a totally unregulated arena with no lever to prevent price creep, decline in service, or even an end to service, or a sale of the asset. In doing so, we deepen the inequity – we actually make it even more difficult to provide the same levels of speed, service, and price as are seen in our more populated centers because no other services or providers will ever be able to afford to build the fiber infrastructure

down all those rural Vermont roads without assistance. That is a true disservice to our fellow Vermonters.

Instead, we can push the money, the tens and hundreds of million dollars in State and Federal funds, toward Communications Union Districts for *investment in public infrastructure for the public good that can be used for multiple purposes by multiple providers, while ensuring a successful business model in our most rural areas*. These CUDs are closer to their communities, they are focused on addressing this issue, and they are determined to do what is right for their fellow citizens over the long term. They are in a position to both hold the public infrastructure and to work with private ISPs to leverage private investment dollars to make our public infrastructure dollars go even farther. When a CUD builds the infrastructure along the roadway and partners with an ISP to build the drops and provide service to the home we have a solution with a much different dynamic than our previous scenario. Now, if the ISP doesn't perform, starts increasing prices or just ceases to exist, the CUD has an alternative. They can use the additional strands on the network to bring on another provider. Even just having *the option* to bring on another provider can serve to keep an ISP in line on service and price.

There is a great deal of discussion about open access. "If we invest public dollars it must be open access." The challenge is how to define open access. Yes, we should build public infrastructure that is designed with sufficient future-proof capacity and access to be used for multiple purposes for multiple providers. Some people advocate for open access in order to promote competition. But the reality is that the business model in these rural areas is so sparse that you need to give one fiber to the premise (FTTP) internet service provider the opportunity to hit critical mass.

A roadway analogy is very helpful here. The fiber infrastructure is the road and it accommodates public vehicles (representing public services such as broadband, health care, library services, education, public safety, etc.). The infrastructure should have enough capacity to provide strands for public safety (the police in our analogy) to have dedicated strands, for health care providers to use dedicated strands between clinics and hospitals (the ambulance in our analogy). Let's consider broadband the bus, and everyone getting high-speed broadband is sitting on the bus. Now, we might have a publicly funded bus – that would be like the ECFiber CUD model where the district has raised funds to build a non-profit that it can hire as its own operator. (The CUD 'buys its own bus' in our analogy.) Or we might have a public-private partnership where the CUD partners with an FTTP ISP to provide service. (The ISP 'buys the bus' in our analogy.) In our most rural areas, those suffering greatest from the digital divide, if you put multiple "buses" on the road, the ridership would be spread so thin that neither "bus company" would even be able to cover the fuel and maintenance costs. The CUDs are in the best position to decide when it is time to have more than one bus on the road. In the meanwhile, they have the public infrastructure to make available for other purposes such as cellular, public safety, libraries, health care, and education – all of which (and more) may want to use the infrastructure outside of the FTTP ISP services.

The key is that a body politic controls the public infrastructure. I believe the CUDs are in the best position to do that. But if a CUD decides to dissolve, that infrastructure should revert to the state. (While municipalities could certainly hold the infrastructure as bodies politic entitled to the apportionment of remaining assets of a dissolved CUD by population (30 VSA 3083(b)(7)), that type of fragmentation would be nearly impossible to manage.) The body politic acts in the interests of its constituents and can decide whether to limit access to the public infrastructure to one FTTP provider in order to enable the success of that provider. BUT, it has leverage and options if the provider is failing to meet the terms of the contract. So long as enough strands remain to facilitate a second FTTP provider, there is leverage to prevent future price gouging and to ensure that the provider continues to upgrade services with changes in technology.

In addition, when a body politic holds the leverage by holding the infrastructure then they can negotiate for affordability. They can help provide the solutions that meet the needs of their community.

We have reached an era in which anything less than 25/3 Mbps should be considered unserved and anything less than 100Mbps symmetrical should be considered underserved. That means that our long-term success hinges on successful deployment of public fiber infrastructure. And, there are people suffering right now with less than 4/1 Mbps service or no service at all. Solutions such as Starlink can be good interim solutions to relieving this barrier to full participation in our society, but it is not a long-term solution.

After a year of living with the COVID pandemic, we all know now that access to broadband is fundamentally an equity issue. We are all painfully aware of how critical and basic this necessity is to the economic, social, health, education, and general wellbeing of the residents of our state. I implore you to not miss this opportunity to create long-term solutions for those who now suffer deep inequities that will have lasting consequences for their families and communities. As you deliberate to find the best solution, understand that we are not trying to build a Cadillac, we are just trying to build the road to the future – one that leads our children to the future and drives the economy of our state. If I can be of service, please let me know.

Sincerely,

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