

# Telecommunications Planning Oversight

## What have we learned in the last 22 Years?

by Stephen Whitaker April 14, 2015

See attached News articles detailing 1992 problems and Legislative Oversight efforts.

<b>Then: 1992</b>	<b>Now: 2015</b>	<b>Relevance</b>
Ten Year Telecommunications Plan required to be written by 1989, discovered to be missing. Plan was discovered missing when it was required in order for NET contract to be found 'consistent with' Ten Year Plan.	Inadequate Ten Year Plan, illegally adopted in 2015 without statutorily required final draft, public hearings and joint Finance/Commerce Committee hearing.	Plan is to form a basis for State Telecommunication Policy, including reliability, regulation, internet, government networks, etc. E911, VTA and BTOP grant were not guided by this policy basis.
Pending NET Contract Regulation known as Vermont Telecommunications Agreement (VTA2)	Pending FairPoint Incentive Regulation Plan Docket presently on hold pending outcome of PSB investigation into Service Quality and November 28 massive network failure.	Independent Public Advocate was hired in 1992. DPS today refuses to acknowledge conflict and has opposed appointment of independent public advocate in IRP docket.
E-911 in Planning Stages	NG-911 contract awarded	No engineering review of E911 RFP or proposals prior to award to FairPoint, now found unable to provide Text to 911 feature. No subcontractor identified as required by RFP.
David Wilson SecAdmin under Governor Dean	Mike Smith prior SecAdmin under Governor Douglas	FairPoint, Comcast, VTel, DirectTV, AT&T and Dish Networks, gave \$2000
David Wilson NET lobbyist	Mike Smith FairPoint VT pres.	each to Shumlin's 2014 campaign
	Mike Smith E911 consultant	with Verizon and Level3 at \$1000
NO. 188. AN ACT RELATING TO TELECOMMUNICATIONS. (H.960) It is hereby enacted by the General Assembly of the State of Vermont: Sec. 1. LEGISLATIVE STUDY OF THE STATE TELECOMMUNICATIONS PLAN (a) A joint legislative committee on telecommunications is created to study the state telecommunications plan proposed by the department of public service		No Legislative Action pending nor even acknowledgment of the problems with the recently adopted "Plan". A Joint Resolution rejecting the plan is the only tool available for the Legislature to require the DPS to begin the process or crafting a real plan.
NO. 207. AN ACT RELATING TO A JOINT INFORMATION TECHNOLOGY OVERSIGHT COMMITTEE. (H.822) Sec.1. 2 V.S.A. chapter 18 added to read: (1994) CHAPTER 18. JOINT INFORMATION TECHNOLOGY OVERSIGHT COMMITTEE		Computer system oversight language for AHS in House-passed Capital Bill. Senate Appropriations proposing IT oversight language in budget. Bill to create/revive JITOC stalled in Commerce Committee and addresses only computer systems \$100k+ includes no attention to 10Year Telecommunications Plan inadequacies.

# Board might kill phone deal

## 10-year plan was not finished

By David Gram  
*The Associated Press*

MONTPELIER — The Public Service Board said Friday it might suspend hearings or scrap a proposed agreement between the state and New England Telephone on phone rates and technology.



**Richard Cowart**

The announcement by Richard Cowart, chairman of the PSB, came after release of a 10-year telecommunications plan by the Public Service Department.

Lawmakers involved in the 1987 legislation that authorized the department to negotiate contracts with phone companies said talks were expected to proceed only after the 10-year plan was drafted.

Cowart told the agreement's negotiators to appear before the board Monday to make arguments on whether the deal should be dropped, suspended or continued while hearings are held.

Even if hearings continue, Cowart said, it was unlikely the case would be finished in time to implement the proposed Second Vermont Telecommunications Agreement in July, as scheduled.

"It does not appear to us that if we were to proceed we would be able to complete the hearings in the time-frame originally set out," he said.

Cowart, who said he was speaking for

the three-member board, said the public should be allowed to have its say on the plan before the state locks itself into the five-year Second Vermont Telecommunications Agreement contract.

The plan released by the department Friday was scheduled to be out by January 1989.

Backers of the new agreement have noted its provisions for lower in-state toll rates, expanded local calling areas and continuing technological improvements to New England Telephone's Vermont network, which they say would make the state attractive to business.

Opponents cite proposed increases in the basic dial-tone rate of about 27 percent plus optional yearly inflation adjustments; increases in per-minute local charges of 50 percent for on-peak calls and 100 percent for off-peak calls; and directory assistance and other charges.

Gov. Howard Dean and Public Service Commissioner Richard Sedano said they hoped the board would continue hearings on the new agreement.

"I think ratepayers will be better off if we continue the process," Sedano said.

Dean said continuing the hearings while the 10-year plan is pending would be "the right thing to do because otherwise we throw the whole agreement out the window."

Opponents hailed the board's move, saying they hoped it would result in the deal's being scrapped Monday.

"We are making progress," said Rep. Peter Shumlin, D-Putney. "The right people might win."



# 1992 VERMONT LEGISLATURE

WEEK 11



## Senate Appropriations panel scrutinizes '93 budget

### House to debate transportation plan

By Meg Dennison  
The Associated Press

MONTPELIER — Using one-time funds for next year's state spending plan concerns Senate budget-writers as they begin making budget decisions this week.

"We have to look beyond (fiscal year) '93 in setting some spending patterns," said Sen. Robert Gannett, R-Windham, chairman of the Appropriations Committee.

Property tax relief and the Current Use program also might be contentious issues as the Appropriations Committee reviews the \$659 million budget passed by the House.

"The effects of this spending has to be considered for (fiscal) '94 and even (fiscal) '95," Gannett added. "There's no indication the revenues are going to turn around."

In the House, lawmakers will return today to debate a transportation spending plan.

The transportation plan includes money for:

- An Interstate 89 interchange in Bolton, a controversial project that has been alternately on and off the books in recent years.

- A bypass around Bennington on U.S. 7.

- Federal funds for the Chittenden County Transit Authority to install equipment complying with the Americans With Disabilities Act.

Meanwhile, the Senate Health and Welfare Committee will vote Tuesday on a health care reform bill.

Late last week, key members of the committee broke a stalemate by agreeing to restore two provisions of a House-passed bill supported by Gov. Howard Dean.

The agreement restores an insurance pool intended to lower health costs for some groups and community rating for individual insurance policies. In exchange, the Dean administration agreed to back efforts to reduce cost-shifting, protect people who might lose insurance as a result of the law and do more for Vermont's 63,000 uninsured while the state studies universal access to health care.

The Senate Finance Committee also will review the bill. Its jurisdiction is over items dealing with insurance.

The Senate Judiciary Committee will take up a gay rights bill Tuesday. The bill, which was defeated on the Senate floor a few years ago, would guarantee homosexuals the same protection against discrimination in employment and housing as other minority groups.

Legislation restricting gambling in Vermont might come up for debate on the floor, Senate President Pro Tempore Douglas Racine said.

The Senate Transportation Committee will hold a public hearing on a state spending plan for highway construction Wednesday at 10 a.m. in Room 11 of the Statehouse.

The Senate Finance Committee and House Commerce Committee hold a 2:45 p.m. hearing Tuesday in the Pavilion auditorium on a proposed 10-year telecommunications plan.

The Department of Public Service



MARK SASAHARA, Free Press

Senators share a laugh during a Health and Welfare Committee meeting in the Statehouse last week on health care reform legislation. Seated around the table from left: Jan Backus, D-Windham, Thomas Macaulay, R-Rutland, Sally Conrad, D-Chittenden, and Cheryl Rivers, D-Windsor.

released its 10-year telecommunications plan last month, more than three years after it was supposed to be out. It has become tied with a proposed five-year contract between the state and its largest

telephone company, New England Telephone.

Opponents of the contract, the Second Vermont Telecommunications Agreement, said that the pact should not

be approved until a 10-year plan is in place. The Public Service Board earlier this month suspended hearings on VTA-II so public hearings could be held on the 10-year plan.

# Lawmakers question rewrite of phone plan

By David Gram  
*The Associated Press*

MONTPELIER — The Dean administration's 10-year telecommunications plan got a major rewrite after talks were completed on a contract on rates and technology between the state and New England Telephone.

"The perception certainly could be that the draft of the plan was tailored to fit" the proposed Second Vermont Telecommunications Agreement, Rep. Gini Milkey, D-Brattleboro, said Monday.

Saying she didn't "want to accuse anybody of anything," Milkey said public officials "have to be careful not to do things that will be perceived as being deceptive."

Former Public Service Commissioner V. Louise McCarren, principal author of the 10-year plan that is up for its first public hearing today, said she did not believe the plan changed as much in substance as in style and presentation.

"The fundamentals are the same," she said. "Universal service, affordability, strong Lifeline (reduced phone rates for low-income and elderly residents) and high quality of service."

But Rep. Terrill Bouricius, PC-Burlington, said the rewrite was "a mirror-image opposite" of a draft 10-year plan that the department showed telecommunications experts in September.

See **PHONE, 2A**

## **PHONE:** Lawmakers question rewrite

Continued from Page 1A  
1990.

He called the 1990 draft "basically a refutation of VTA-II. If that (the 1990 draft) had been the 10-year plan, I have no doubt the Public Service Board would have to deny VTA-II."

"The (new) plan reflects the contract," Milkey said. "It seems to me it should be the other way around."

The lawmakers' comments came after a House Commerce Committee hearing Monday in which Public Service Commissioner Richard Sedano told the panel that McCarren worked extensively on the 10-year plan in the two months after she left the commissioner's post in October.

He also acknowledged that there were strong similarities between policies in the second agreement and those called for in the plan. "The same people worked on both of them."

McCarren's work on the plan was done for the department free of charge, following the October unveiling of the five-year contract governing rates and introductions of technologies between the department and New England Telephone.

Sedano agreed in the hearing to make copies of the 1990 draft of the 10-year plan available to members of the House committee. He declined a similar request by The Associated Press in January, saying the 1990 draft was subject to "executive privilege." He later relented, but the AP had obtained a copy elsewhere.

Under a state law passed in 1987, the 10-year plan was supposed to have been out in January 1989. Several lawmakers have questioned the sequence of events that saw the plan released last month, during board hearings on the second agreement.

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# Dean Concerned About Fate of 10-Year Phone Plan

By **DAVID GRAM**

February 27, 1992

**The Associated Press**

**MONTPELIER** — Gov. Howard Dean on Wednesday said he was worried that public hearings on a state telecommunications plan could “become a surrogate” for the fight over a proposed contract between the state and New England Telephone.

Dean’s comments came a day after the Public Service Board said it would continue hearings temporarily on the proposed Sec-

ond Vermont Telecommunications Agreement, then suspend them for six to eight weeks while public hearings are held on the 10-year telecommunications plan.

“I think if the board wants to delay this until there are more hearings on the telecommunications plan, I have no problem with that whatsoever,” Dean said.

The board’s ruling on Tuesday labeled the 10-year plan a key piece of evidence in its consider-

ation of the five-year contract proposed between the Department of Public Service and NET. It said the public should have its say on the plan before the state locks itself into a five-year deal with its dominant telephone service provider.

VTA-II, as the pact is known, calls for lower in-state toll charges and expanded local calling areas, as well as sharply higher dial-tone and local usage charges.

VTA-II has been heavily criticized at public hearings, as well as by some lawmakers. And Dean expressed worry that those complaints would be carried to hearings on the 10-year plan.

“The only concern that I have is that the hearings for the telecommunications plan will become surrogates for hearings on VTA, because that’s going to be pending” while the 10-year plan hearings go on, Dean said.

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## VERMONT/NEW ENGLAND

# Panel: Senate should vote on wel

By Susan Allen  
The Associated Press

MONTPELIER — Members of the Legislature's Administrative Rules Committee said Friday the panel is not the proper arena for Gov. Howard Dean to push a welfare reform proposal into law.

But the governor said he would await the Senate's action on the bill before deciding whether to go before the committee for approval.

Rep. Harold Weidman, R-Wallingford, said: "I'd rather the entire body face the music ... call



John Murphy



Douglas Racine

its shots."

Attempts to bypass the full

legislative process, he said, "could be looked upon as an end-run" around the system.

Rep. John Murphy, D-Ludlow, agreed.

"If that bill can't get through the Legislature, it doesn't belong before the committee," he said.

Dean had planned to take his welfare reform proposal before Administrative Rules for approval.

But legislative leaders objected, arguing that the plan — which includes a requirement that welfare recipients work for

their benefits — constitutes a significant change in state policy and should be acted upon by the Legislature.

The House hastily drafted and approved a bill authorizing the change. But Senate President Pro Tempore Douglas Racine, D-Chittenden, said Friday the measure would not pass his chamber.

Racine said he hoped Dean — lacking Senate approval to implement welfare reform — would not consider House passage as a legislative OK and press ahead with plans to go before

# Bill would scrap 10-year phone plan

By Ross Sneyd  
The Associated Press

MONTPELIER — Lawmakers would take a larger role in writing a 10-year plan regulating Vermont telecommunications policy, under a bill approved by the House on Friday.

If approved by the Senate, the bill would scrap a 10-year plan released this year by the Public Service Department and would require legislators to hold a series of hearings this summer to come up with a new one.

The bill would order the Public Service Board to suspend hearings on a proposed contract between the state and New England Telephone governing rates and technology.

A version of that agreement that the board is considering, called the Second Vermont Telecommunications Agreement, is designed to give the phone com-

*"I think we will definitely get a different contract. I think there are some clear indications that the public is concerned about the increase in basic rates and other things."*

Richard Saudek, of Public Service Department

pany greater latitude to introduce technology without having to go to the state to argue for increases in rates.

The deal has been criticized for increasing rates for basic phone service in return for lower long-distance rates.

Legislators said they were angry that the 10-year plan, which was supposed to be the basis for the phone company contract, was not completed by the Public Service Department until hearings had begun on the phone

deal.

Richard Saudek, who was hired by the Public Service Department to represent ratepayers in the phone deal hearings, said he planned to call for phone hearings to be suspended immediately.

The House bill would require the Public Service Department to rewrite the 10-year plan while a legislative panel holds at least six hearings around the state during the summer.

"I think we will definitely get

a different contract," Saudek said. "I think there are some clear indications that the public is concerned about the increase in basic rates and other things."

In other legislative action Friday, the Senate Judiciary Committee voted to add medical malpractice reform to a bill changing the state's health care system.

Under the panel's proposal, an arbitration board would decide malpractice cases. Appeals would be heard by the state's Superior Court.

Committee Chairman Sen. John Bloomer, R-Rutland, said the panel's makeup would include one referee — a retired judge or attorney, for example.

The House has passed a health care reform bill that calls for a three-member arbitration panel to hear cases.

# Telecommunication-plan revisions stress affordability

By David Gram

*The Associated Press*

MONTPELIER — The Public Service Department on Monday issued a new draft of its 10-year telecommunications plan in the wake of widespread criticism that an earlier draft was not friendly enough to consumers.

Commissioner Richard Sedano said his department sought to incorporate public comments received in writing and at hearings in late March and early April. He said the result was "changes on almost every page" of the 65-page document.

The draft was released before a special legislative summer study committee holds its first hearing Friday to gather

public input on telecommunications planning issues.

A bill creating the summer study was passed during heated debate over the now-stalled Second Vermont Telecommunications Agreement, which was worked out between the department and New England Telephone. Among the features of the second agreement were:

- A 27 percent increase in basic dial-tone rates by the start of the second



Richard Sedano

year of the five-year pact, with other inflation-adjusted increases possible.

- A 50 percent increase in per-minute charges for local calls between 9 a.m. and 9 p.m. weekdays.

- A 100 percent increase in per-minute charges for local calls during other, off-peak hours.

- Broader local calling areas in many parts of the state where customers complain that calling the next town is a toll call.

- Expanded local calling areas of up to 24 miles from the caller's home exchange for 7 cents a minute on-peak, 3 cents a minute off-peak.

- Lower in-state toll charges.

The department released its first

public draft of the 10-year telecommunications plan in the midst of agreement hearings before the Public Service Board in February. The board and the Legislature responded by putting the contract on hold until a final 10-year plan is in place.

The summer study committee will be made up of three members each from the House and Senate. They are Reps. Michael Obuchowski, D-Rockingham, Paul Harrington, R-Middlesex, and Terrill Bouricius, PC-Burlington; and Sens. Mary Just Skinner, D-Washington, John Carroll, R-Windsor, and Edwin Granai, D-Chittenden.

Among critics' charges was that the second agreement and the earlier draft of the 10-year plan did not place enough

emphasis on affordability.

The earlier 10-year plan also was criticized because it was rewritten, mainly by former Public Service Commissioner V. Louise McCarren, after she and telephone company officials unveiled the agreement contract proposal in October.

Sedano said the changes in the 10-year plan were focused largely on giving greater emphasis to affordability.

One statement in the new draft not included in the earlier one was: "Ensuring affordable network access and basic service charges should continue as the cornerstone of regulatory pricing concerns as these elements of phone service remain among the most monopolistic of service categories."

## VERMONT

# Legislative panel says telecommunications plan is weak

By David Gram  
The Associated Press

MONTPELIER — A draft report from a legislative committee is sharply critical of the Public Service Department, saying its proposed 10-year telecommunications plan fails on several fronts.

"The proposed plan tends merely to describe the world of telecommunications as it exists now," without laying out goals or strategies for achieving them, said the draft report of the Legislative Committee on Telecommunications.

Panel members went over the draft Wednesday in preparation for the Aug. 15 deadline by which they are to release it in the form of recommendations to the department.

One of its recommendations is that monitoring of telecommunications issues be continued permanently by a joint committee of the Legislature. Committee members said that would allow for more public participation in telecommunications planning.

"We don't consider this a real plan at this point," said Rep. Michael Obuchowski, D-Rockingham, co-chairman of the study

committee. "And we would just be fooling people if we point at this and say this is a Vermont telecommunications plan."

The draft report expressed strong doubts that the proposed 10-year plan should be used as a major source of guidance when the Public Service Board resumes hearings this fall on the proposed Second Vermont Telecommunications Agreement between the department and New England Telephone.

The board suspended hearings on the contract, known as VTA-II, after concerns were raised by lawmakers and others that the department had signed the contract with the company without first having in place a 10-year plan, which was supposed to be approved by January 1989.

The board in essence told the department to produce a plan by which the board could judge the

agreement. But Wednesday's draft report said the department's plan would not provide the board the yardstick it needs to examine the proposed contract.

"The proposed plan fails to establish the specific objectives and goals that are needed if it is to serve as the basis for significant regulatory decisions, such as any new Vermont Telecommunications Agreement," the draft report said.

Sen. Mary Just Skinner, D-Washington, co-chairwoman of the study committee, said a new standing committee in the Legislature could track the numerous issues the panel's draft report said needed further attention.

Among the draft report's rec-

ommendations:

■ The department should ask the board to determine periodically what constitutes basic telephone service. Basic service used to be crank telephones and operator-assisted local calls; now one debate is over whether it should include push-button dialing. Industry experts say the debate might soon be whether high-speed data transmission is basic service.

■ Any major improvements in Vermont's telephone network should await a thorough planning process with public participation. That recommendation appeared aimed at concerns that the agreement was going to buy technology most of the state doesn't

need.

■ The board should be flexible about petitions for expanded local calling areas. Toll calls to the next town have been a complaint in some parts of Vermont for years. The plan envisions local calling areas being redrawn in a standardized process.

■ Competition in the telecommunications market should be encouraged so long as it doesn't leave some Vermonter

cut off from basic, affordable telephone service.

■ Bring basic 911 emergency calling service to all of Vermont before moving to so-called enhanced 911, which allows the location and other information about the person calling to appear on a dispatcher's computer screen.



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## PROPOSED STATE REGULATIONS

By law, public notice of proposed state rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To get a copy of a rule or make suggestions to the agency, call or write the contact person listed below. You may also comment on the proposal by writing the Legislative Committee on Administrative Rules, State House, Montpelier, VT 05602 (828-2231).

## RULES REGULATING THE USE OF DESIGNATED PUBLIC WATERS

Vermont Proposed Rule: 92-P57

## AUCTION

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## AT PUBLIC AUCTION

TUESDAY, AUGUST 11, 1992 at 11:00 A.M.

SUGAR HILL, N.H.



# Legislative panel trashes Vt. telecommunications plan

By Betsy Lilley  
Free Press Staff Writer

A state Public Service Department 10-year plan on telecommunications "fails to articulate a vision" and is "inadequate both in its scope and its depth," according to a legislative committee's report.

The 21-page report, released Thursday, addresses a state telecommunications plan that, by law, was to have been completed in 1989. It was not finished until after the Vermont Telecommunications Agreement II — a contract between the state and New England Telephone Co. about rates and technology — had been signed. That delay provoked criticism from some lawmakers and advocates, leading to the eventual shelving of VTA II.

BFP August 14, 1992

Now the state Public Service Department must rewrite its plan — in light of the dozens of legislative recommendations included in the new report and other public testimony — by Oct. 1, a schedule department officials protested this week.

Vermont's telecommunications future depends upon the plan.

Public Service Commissioner Richard Sedano said, "We were concerned that if we went too quickly we would be shortchanging the value of the public comment we received."

But state Rep. Michael Obuchowski, D-Bellows Falls, was unsympathetic. "It's not realistic to think that by December they'd have it done," he acknowledged. "The period prior to 1989 was wasted. The period from 1989 to

## Highlights of panel's study

A legislative study committee highlighted these deficiencies and outlined recommendations for the state Public Service Department's 10-year telecommunications plan. The plan:

- Fails to articulate a vision of what broad public purposes can and should be accomplished through telecommunications during the next 10 years.
- Does not establish the specific objectives and goals that are needed if it is to

serve as the basis for significant regulatory decisions, such as a revised Vermont Telecommunications Agreement with New England Telephone Co., which outlines rates and technological advances.

- Has only scratched the surface of the issues that need to be addressed by a credible and functional plan.
- Does not contain adequate consumer surveys to determine what telecommunications services are needed.

now was wasted. It's tough."

The legislative report emphasizes affordability and accessibility to basic telephone service. "We want to make sure that everyone that wants access has ac-

cess," Obuchowski said.

But Sedano cautioned that guaranteeing decreased costs for basic service could have pitfalls. "That may lead to the total cost of Vermont telephone

services' going up," he said.

Committee members admitted that their report was highly critical of the department's work.

"It basically completely trashes the Department of Public Service's 10-year plan and acknowledges that in basically every way it is inadequate," state Rep. Terrill Bouricius, PC-Burlington, said.

Calling the report "aggressive," Sedano emphasized that his department does not have to follow the recommendations of the legislative committee nor seek the approval of the Legislature.

"They're only one of the things we have to listen to. There are a lot of other individuals out there that have important things to say, and we have to listen to them," he said.

## EDITORIAL BOARD

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# OPINION

Sunday, September 13, 1992 ■ Editorial Page Editor: Candace Page, 660-1867

Manufacturing Agriculture Travel/Tourism World Trade Finance

VERMONT: 10 STEPS TO A  
**STRONGER ECONOMY**

Infrastructure Education Regulation Development Leadership

## Plan first, spend later

### The question

■ How can Vermont plan its infrastructure to help economic growth?

**H**ighway infrastructure is boring, until you're stuck in a traffic jam. Telecommunications infrastructure is dull too, until you can't get a call through in an emergency. Solid waste infrastructure is just garbage hauling, until your bill doubles overnight — or worse, a water supply is contaminated.

Therein lies Vermont's infrastructure challenge: to prepare for the state's needs before the crisis occurs.

Vermont's response to the challenge has been horrible. The state spent \$30 million over five years for solid waste planning and there are only two landfills that fit the plan. The state spent 10 months negotiating a five-year telecommunications agreement with New England Telephone, without any plan in place at all. And in what was supposed to be a model of local control of federal money, Vermont spent \$37 million on Chittenden County's Circumferential Highway before an inch of road was built.

Those are your dollars, taxpayer.

### Solutions: government

Because most infrastructure is paid for by the state and federal governments, and because private infrastructure is usually regulated, Vermont government must do a far better job of planning.

■ There must be a plan. Embarking on contracts — like the deal with NET — without defined goals is idiocy. It wastes taxpayer dollars and costs the phone company too.

■ Align the plan's duration with the industry's pace. A 10-year energy plan makes sense for Vermont. New energy technologies take that long to prove themselves and to become economically feasible — wind power's recent improvements are one example.

A 10-year plan for telecommunications, with that industry's rapid changes, is presumptuous at best. Three years might be a more credible interval.

■ Focus planning on results. The primary failing of solid waste management was that the planning process was more important than the outcome. The goals should be defined first, then a method of planning to accomplish them. The state's goal should have been to build sufficient lined landfill capacity, not to create solid waste districts.

■ Never bond for planning. Vermont's spending on solid waste is especially tragic because so little infrastructure has resulted. Spend

### EDITORIAL

#### The problem

■ Vermont has wasted millions of dollars on poor infrastructure planning.

#### The facts

■ Vermont spent \$37 million on the Circumferential Highway before an inch of road was built.

■ The state spent 10 months working on a contract with New England Telephone with no plan in place at all.

■ After \$30 million and five years' work toward building non-polluting landfills, only two of them have been built.

bond money on bricks and mortar, fiber optics, or some other tangible public good.

■ Infrastructures should compete with one another. Which does Rutland need more, a U.S. 7 bypass or an expanded airport? With the current flexibility of federal construction funds, now is a great time to ask these questions.

#### Solutions: the public

Every step of the planning process provides for public input.

■ Get involved. The NET contract was nearly signed before Vermonters opened their mouths. The jargon of telecommunications — or waste water, or highways — should not scare anyone off.

■ Remember it's your money. Federal highway dollars come out of your taxes. Money wasted on Circ Highway and solid waste is equal to about half a year's state aid to education.

■ Use lower-impact infrastructures. They tend to cost less and have fewer side effects. Vermont's interactive television network, for example, reduces demand for infrastructures ranging from highways to hotels to conference rooms. A low impact strategy also makes environmental sense:

The average car puts out 193 pounds of air pollution a year.

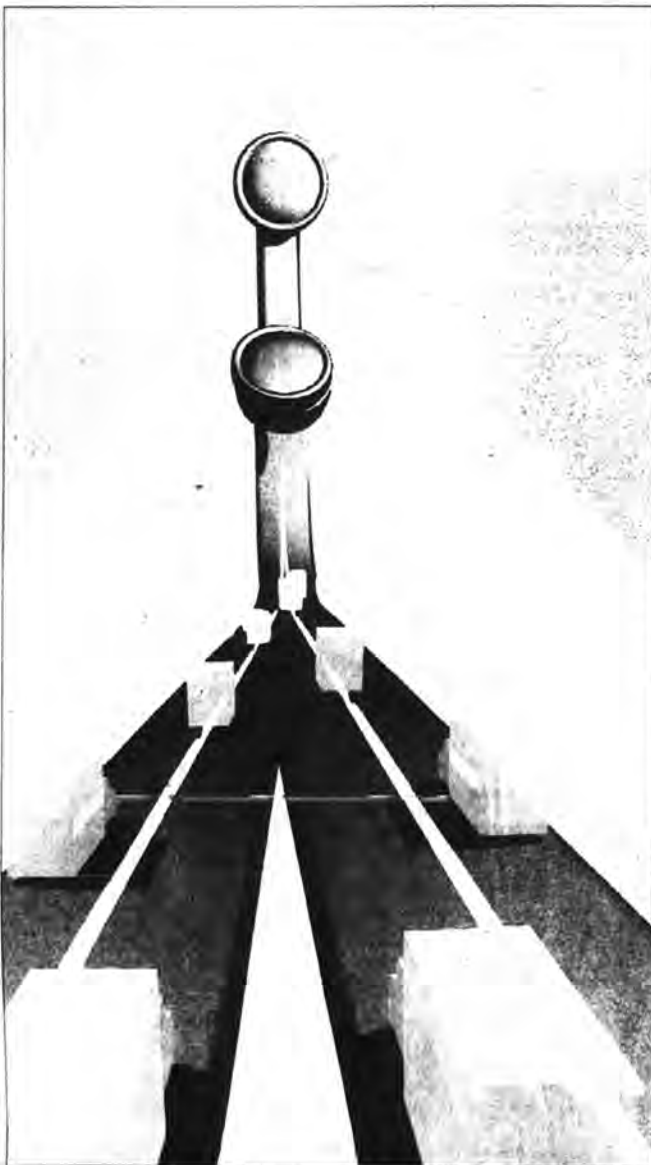
To decide which kinds of infrastructure make the most sense, there's good advice in a recent report by The New England Council: "We cannot hope to compete against cheap, unskilled foreign labor. It follows, then, that we should not focus on the production of commodities with long production runs using workers with few skills. Production of high value goods manufactured by skilled workers will enable New England firms to pay high wages."

By this reasoning, infrastructure to support low-skills manufacturing is money wasted. A focus on high-skills needs has two parts. The first is human infrastructure — that is, developing skilled workers. This series will address education next week.

The second part is intelligence infrastructure: Information systems, electronic publishing, videotext, cable television and more. It also means airports, because entrepreneurs and idea exporters travel by air.

Vermont's planning challenge will be to make these tools available to everyone, just as phone service and highway access are today. In 10 years Vermonters will be shopping at home, through a computer built into their TV. In 50 years, the shortage of fossil fuels will change the nature of the automobile entirely.

But Vermont should hold fast to the goal that, in 100 years, this will still be an appealing place to live — because of the state's beauty, and because of its lack of jams in whatever shape traffic takes in 2092.



CHRIS WILLIS, Free Press

**VERMONT**

# Telecommunications plan has lots of critics

By David Gram  
The Associated Press

**MONTPELIER** — Criticism appears to be outweighing praise in reviews of the latest effort by the Public Service Department to produce a 10-year plan for Vermont's information infrastructure.

David Usher, director of external affairs for New England Telephone, said he was worried that the 98-page Vermont 10-year telecommunications plan could lead to too much government involvement in an arena that should be left to the free market.

"It seems to rely upon the government sector to provide whatever analysis and input on future technological improvements," Usher said of the plan, which was released Friday.

"In reality that has to be balanced by what the marketplace does, what competitors do and what the customers want," he said.

Some members of the legislative committee on telecommunications, which met over the summer and made recommendations on the 10-year plan last

month, expressed disappointment as well.

Rep. Michael Obuchowski, co-chairman of the panel with Sen. Mary Just Skinner, D-Washington, said he was disturbed that the department did not take the committee's recommendation and call for lowering Vermont's telephone rates in the next 10 years.

The committee had called for Vermont's phone rates — among the highest in the country — to be lowered to or below the national average.

"We want to see the rates go down," the Rockingham Democrat said. "We were quite serious when we included language in our report to them that we should strive over the next 10 years to be No. 26 (among the states) instead of No. 1."

Public Service Department Commissioner Richard Sedano said the department's plan called for seeking the lowest rates possible, adding that the national average was an arbitrary goal that might or might not work in Vermont.

Skinner said she was encour-

aged by the department's apparent willingness to reconsider its push for local measured service, which charges for local calls by the minute.

Skinner and other committee members had argued that per-minute charges for local calls would harm the telephone's role in Vermont communities.

"I run into people all the time who say, 'Gee, I do a lot of volunteer work. I'm on a fixed income. I can't afford to make all these calls for the church group or the Scouts.'"

The committee had called for free local calling during off-peak hours. The department said in its new plan that local measured service should be reconsidered, but pointed to a study indicating that it appeared to be the cheapest option for many groups.

Usher said he was troubled by the push for lower basic rates, combined with an effort to include TouchTone push-button dialing service and free local calling into those basic rates.

The legislative panel and department agreed that TouchTone, for which NET charges \$1.55 a

month, costs nothing extra and might be cheaper to provide than the traditional pulse dialing.

Of the move to include TouchTone and free local calling in the basic rate, Usher said, "You can't just can't bundle all of these things together and expect that the price won't reflect what's in the bundle."

The plan will be up for review at two public hearings Monday at 3:30 and 7 p.m., both in the Pavilion Auditorium in Montpelier.

The Public Service Department has been under fire for much of the year over its handling of telecommunications issues. The 10-year plan was due in January 1989, but it was not produced until last February, after the five-year Second Vermont Telecommunication Agreement had been reached between the department and New England Telephone and submitted to the Public Service Board.

Lawmakers cried foul, saying the plan should come before the contract, and hearings on VTA-II were suspended to give time for a 10-year plan to be finalized.

In recent days, the pressure

the department has been under has begun to show. Visibly tired Public Service Department officials Friday said they had been up until 1 a.m. shooting for the legislative committee's Friday deadline for release of the plan.

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## NET lobbyist conflict gets wake-up call

**T**he letter to the 180 members of the Vermont Legislature went out on Election Day, and it went right to the point.

"This firm represents the New England Telephone Company," it said. "In light of the recent controversy surrounding the relationship between New England Telephone and the state of Vermont, I thought it was important (to) ensure that the whole story was shared with the members of the General Assembly."

How nice. Accompanying the letter were copies of three others, including NET Vice President Drew Rockwell's "Open Letter to Our Vermont Neighbors," all meant to pooh-pooh the rantings of those who think Gov. Howard Dean is too cozy with Ma Bell's offspring.

The author of this brief bit of lobbying handiwork was David Wilson, a well-respected Montpelier insider and partner in the Montpelier law firm of Wilson & White, which has represented NET for several years.

For those legislators with exceedingly tiny brains, it is possible the connection wasn't immediately made, that they somehow didn't recall that only three months ago, Wilson was Dean's closest adviser, his go-to guy, his administration secretary.

Possible but highly improbable. Instead, many might conclude the following: If Wilson can slip into NET's payroll that easily, then perhaps Dean was influenced by NET's propaganda after all. Maybe he really couldn't say no to NET on the controversial Second Telecommunications Agreement for fear the company would pull the plug on support for an education grant.

Wilson's letter implied that there's no linkage here, that Rep. Michael Obuchowski, chairman of the House Appropriations Committee, and Rep. Peter Shumlin, D-Puffey, were all wet when they accused Dean of being too chummy with NET.

# VERMONT

Wednesday, November 11, 1992 ■ Metro Editor: Rob Eley, 660-1862

But the larger issue is the revolving-door syndrome, or just what the Legislature — and the public — is supposed to think when Wilson can be in Dean's inner circle one day and running errands for NET the next.

Or Community Health Plan, to cite another example. Wilson, who was intimately involved in developing the Health Care Authority for Dean, is representing CHP on the Hospital Data Council, the group that sets spending guidelines for Vermont's hospitals.

Wilson's advice was not to worry. "The question is where to draw the line and how to draw the line," he said. "I think you have to rely on the integrity and good faith of the appointees."

Obuchowski is not so sure. "It troubles me," he said. "I realize Vermont is a small state, but the administration, secretary calls a number of shots, usually with the governor's approval ... and the potential for influence is there."

Exactly. Wilson might, as he has claimed, have steered clear of telecommunications matters when he worked for Dean, and he might somehow be right that representing CHP does not directly conflict with his work to create the health authority.

But in both cases, he was in a position to influence policy in areas in which he would someday have a personal financial interest.

"The revolving door is spinning faster than ever," Rep. Terrill Bouricious, PC-Burlington, said. "The present policy is woefully inadequate."

What to do? Dean, like his predecessors Richard Snelling and Madeleine Kunin, has a one-year ban on former appointees' lobbying on issues in which they participated before leaving government. Wilson said he thinks that he has complied with that policy.

Bouricious said the policy is too weak and is drafting legislation to upgrade the rules on appointees turned lobbyists. Wilson said he is worried that if the rules become too stringent, people in the private sector might become unwilling to make even a temporary leap into public service.

It's a tough call, either way you look at it.

*Sam Hemingway is the state news columnist for The Burlington Free Press.*

# VERMONT

**Section B**  
Births, Deaths: 2B  
Court news: 4B

Saturday, September 12, 1992 ■ Metro Editor: Rob Eley, 660-1862

## PSD releases its phone plan

### Panel's suggestion on rates ignored

By David Gram  
The Associated Press

MONTPELIER — The Public Service Department issued a 10-year telecommunications plan Friday that appeared to move toward recommendations made by a legislative panel and away from earlier drafts.

It did not adopt the recommendation of the special Legislative Committee on Telecommunications that Vermont's telephone rates should be lowered from among the most expensive in the country to at or less than the national average within the next 10 years.

Instead it repeated earlier drafts'

statements that basic rates are likely to rise because of reduced subsidies from long-distance charges. Those, in turn, are because of changes in federal regulation and increased competition in the in-state toll market, the document said.

But it said Vermont should try to temper the trend toward higher basic telephone charges, saying "affordable basic service remains a priority." It said expanded Lifeline or other subsidy programs for low-income people could help.

The draft agrees with the legislative panel on several points.

The department made at least one change that could be damaging to the proposed, but now stalled, Second Vermont Telecommunications Agreement between the Dean administration and New England Telephone.

That agreement had called for new

"expanded local calling areas" of 24 miles in any direction from the point of origin for 7 cents a minute during the day and 3 cents during off-peak hours.

The legislative panel and other critics of the agreement said local calling areas should be designed individually in line with "communities of interest" — areas where people are most likely to call around the state. The committee recommended that a procedure be set up under which the Public Service Board could review petitions for individual areas for expanding local calling areas.

The department appeared to abandon the position it took in the proposed agreement. "A structure for expanding calling areas should be created that permits flexibility and a timely response to reflect the expanding communities of interest," the new draft said.

### Public hearings

The Public Service Department has set public hearings on the latest draft of its 10-year telecommunications plan for 3:30 to 5:30 p.m. and 7 to 9 p.m. Sept. 21 in Montpelier's Pavilion Auditorium.

The department agreed with the committee that TouchTone push-button dialing service — for which New England Telephone charges \$1.55 a month — should be included in basic rates at no additional charge.

Department officials could not be reached late Friday. New England Telephone spokesman David Usher declined comment until he could review the recommendations.

# **The 2015 Telecommunications Bill is as Clear as MUD**

## *- Why are we still heading in the wrong direction?*

The H-117 versions in Senate Finance resolve none of the present problems. In fact, they further delay, confuse and complicate our telecommunications statutes. The bill rewards the same Department that has failed to produce a valid telecommunication plan for ten years by giving them a new division and staffing. It puts the Department of Public Service in yet another conflicted position, that of playing Santa Clause with 'Connectivity' grants as well as owning the fiber assets built by VTA. The Department is supposed to regulate the telecommunication utilities, not compete with them by owning fiber nor invest public grant money in their soon to be obsolete copper infrastructure.

The longer we postpone action on a Ten Year Telecommunication Plan, the more we cause unmeasurable damage to Vermont's economic future. The status quo serves no one except for Comcast and FairPoint as they continue sucking more than \$100M dollars a year out of Vermont, overbuilding and cherry picking the low hanging fruit of easy to reach fiber customers. The proposed bills further delay the development of a coherent vision of a prosperous future for Vermont; a future which should be founded upon a superior telecommunications infrastructure, sound policy and diligent oversight. This must start with a real ten year plan

You need to ask these questions: What pieces of the bill must be done now?, and What pieces would it be better to take the summer to analyze? Should this be done with or without a Joint Information Technology Study Committee? The General Assembly decided this was required in 1992 under much the same circumstances.

### **What needs to be done now?**

- VTA employees understandably need to transition to new jobs
- A single Meteorological Tower requires an exemption according to DPS
- The AG's prohibition on re-transmission of re-transmission fees
- The BroadbandVT.org and ConnectVT websites needs to remain live.

The rest of H-117 strike-all (or House passed bill) can and should wait until next year to provide adequate time to eliminate the cross purposes and understand the contradictions, negative impacts and collateral damage that would be caused.

## **What new measures should be in an H-117 strike-all this year?**

- Pass a moratorium on long term CPGs until a real Ten Year Plan is completed.
- Require a finding by the PSB that all new CPGs and CPG renewals be consistent with the 10YP, when a plan is finally completed.
- Require Pole attachment make-ready rulemaking by the Public Service Board, (as was mandated in sec. 9 of Act 53 of 2011-and is still not done) including penalties to be paid to the State for enforcement and award of damages to aggrieved parties.
- Municipal Union Districts-Telecommunications (MUD-T) enabling legislation
- We need a VTA website keep alive plan as it is too valuable to shut down
- Disapprove the 10 Year Plan and get the process started anew.

A complete and duly adopted Ten Year Telecommunications Plan must be completed prior to allowing any more long term CPG renewals, and should logically be completed prior to expending any of the Connectivity Initiative / USF broadband funds being disbursed, which are required by H-117 to be spent '*consistent with the 10YP*'. Just how will that work? To have any other policy guidance be consistent with the Plan, you must first have a real plan, complete and adopted in accordance with statute. We have none of these at this point.

A finding that the Ten Year Telecommunications Plan is complete and consistent with the goals of 30 VSA 202c must be a prerequisite to adoption of the Plan.

The Plan should be officially adopted by the Legislature rather than the DPS. The committees with Telecommunications oversight or a Joint Information Technology and Telecommunications Oversight Committee should make the finding of completeness with the full House and Senate adopting the Plan by Joint Resolution. A joint resolution is now the only method of disapproval under 202d.

Comcast has notified the Public Service Board, on the record, of its intent to file for an 11 year renewal of its CPG on June 1<sup>st</sup>. This is a full nineteen months prior to the expiration of its existing CPG and may be an attempt to get in under the wire. Last year, the Senate telecom bill included a moratorium on long term CPG renewals, until the plan was complete, which was subsequently removed before passage.

What measures should the legislature consider with regard to preserving the State's ability to regulate and impose conditions on the Comcast CPG? Examples that immediately come to mind include open access to dark fiber in the public right of way or in conduits and participation in pole attachment rulemaking, as well as disclosing the locations of all fiber, both in use and dark, as well as the current locations of all of the fiber to coax “nodes” which serve about 500 customers each.

H-117 continues to promote a misplaced emphasis on expensive and never ending subsidies for Incumbent Local Exchange Companies. The bill delays the creation of a statewide fiber design, plan and budget, while ignoring or even impeding the goals of 202c, especially the four which are the most clear and most important:

- Competition
- Open Access by competition to fiber optic infrastructure
- Fiber to every address in Vermont by 2024
- Not installing soon to be obsolete infrastructure

H-117, also continues to make statutory changes where session law would be more appropriate. Broadband speeds, adoption dates, (some dates already passed) and similar fast changing events belong in session law, not in statute. We continue to try to use a new laws to fill gaps and make good on broken broadband promises, while still lacking a complete and duly adopted Ten Year Telecommunications Plan to guide us and serve as a policy basis for decisions.

The H-117 bill includes:

- Another set of Goals inserted as 202e which conflict with existing (see attached comparison table)
- An annual Broadband Action Plan, which should be part of the 10YP
- A new Broadband Connectivity Division under DPS
- A new Connectivity Initiative grants program administered by DPS
- A plan to spend last year's doubled USF tax on grants and salaries
- A carry forward of infrastructure secrecy from 2011 and 2014 Acts.

Yet the bill conspicuously does not include:

- Any recognition of DPS' history of repeated failed planning efforts
- Any recognition of PSB's failure to complete pole attachment rules required for expediting an expedited dispute resolution process
- Any acknowledgment of failed legislative oversight, or its impacts



- Any recognition of the existing contradictory and confusing telecommunications statutes governing cable, telephone and broadband.

Which goals will now guide the telecommunications plan? 202c or 202e?

Which plan will be the “basis for State telecommunication policy”

- The Ten Year Telecommunication Plan?
- The Broadband Action Plan?
- Both? Or Neither?

The Connectivity Initiative grant award decisions will be made according to someone's interpretation of the absolutely ambiguous phrase:

*“Best available, most economically feasible service capabilities”*

The foxes are indeed **running** the hen house.

The High Cost Fund distribution language has been repeatedly gamed to continue state supported copper or coax build-out, by extending for an additional five years, the ILEC's ability to tweak geographic area coverage and deploy obsolete speeds of 4/1, 10/1 or 25/3 Mbps. FairPoint's Vermont service areas will likely never see speeds above 15/3 over DSL. Are we also going to subsidize Comcast to extend cable modem technology, which can deliver 25/3 speeds, as an interim measure? Comcast and FairPoint have made statements that they have no intention of building out fiber optic infrastructure to serve every E-911 address. Fiber is what is necessary to meet the statutory goals of 100/100 Mbps by 2024.

Similarly, Vermont's ILECs are relying on the FCC CAF II funding program and the Rural Utility Service, including lobbying on the rules for how the funds are to be distributed, and for the most flexible deployment schedules. This federal money is totally distorting the process in Vermont and impeding any real progress toward our goals. This has to stop. Only by solving this problem, decoupling Vermont's policy from the contortionist policy measures to obtain Federal funds, will we ever craft a sound policy and a real telecommunications plan and begin to move forward on a path to realize our goal of ubiquitous fiber broadband by 2024.

Why is the Department of Public Service continuing to pursue a grants paradigm? Because the ILECs want never ending subsidies as grants? Several witnesses at the 2014 public hearings on the draft telecommunication plan

proposed that a revolving loan fund is the best method of providing public support for broadband build-out. Be it funded from CAF II money, USF money or from long term bonds, the benefits of this approach are many. Interestingly, but not surprising, the final draft of the plan, which the Department considers to be the Final adopted Plan, contains no mention whatsoever of revolving loan funds.

At one point last fall, a \$1 Billion estimate for a statewide fiber build-out was offered by the Director of Telecommunications. When prodded, it turned out that his estimate did not take into account any of the existing fiber optic infrastructure already in place, lit or dark. Even more interesting, this same Director announced that he did not know where the existing fiber is. None of the wealth of existing fiber already on the poles in Vermont, which might have reduced the \$1B estimate by 60-70% or more, was factored into his off-the-cuff estimate. The Governor soon quoted the estimate in a flippant remark about *not finding \$1B under his pillow*.

The DPS did not even inquire of the regulated utilities in preparing the draft plan, as to where any fiber facilities are located. The explicit authority to require this information be provided to the DPS has existed under 30 VSA 202d since the passage of Act 87 of 1987.

Confidentiality considerations for such information are to be addressed under the supervision of the Public Service Board, where they belong. Additional and conflicting statutory provisions for 'voluntary submission' of infrastructure information and maps, have been added to statute since 2011. These conflicting provisions should be removed from statute as confusing, contradicting 202d, an impediment to competition and informed public participation in the planning process.

As another example of DPS planning, I was surprised to hear the same DPS/VRTA Telecommunication Director disclose to the Senate Finance Committee recently that he was not aware of the extent of the VTRANS fiber optic infrastructure. This is the person directly responsible for the 10 Year Plan, and who announced last month that the 2014 draft is the most detailed Telecom Plan in ten years! Admittedly, not a high bar to jump as there were no telecommunications plans completed in the last ten years, despite the statutory 3 year revision cycle.

To address the committee's question: VTRANS, beginning in 2010, buried six plastic conduits in the median of the interstate highways, I-89 & I-91, spanning from Sharon to the Hartland Rest Area. This is only 14.15 miles total. Only one of these six conduits is currently in use with a single 144 strand fiber optic cable running through it belonging to TelJet Longhaul. LLC. A leasing fee and a 1Gbps

circuit from White River Junction to the DMV building in Montpelier compensate the State for use of the plastic conduit.

No plans are said to exist for extending this VTRANS project beyond the 14 mile pilot project. Nor are there any plans for conducting an emergency repair were a heavy truck accident to dig deep enough into the median to sever the cable. Nor are there even any records of discussions of these matters. Fascinating.

Unfortunately, learning all this from VTRANS required several months of records requests, claims of exemption, attempts to charge over \$3k in fees, then a Superior Court action, all before the requested records were made available, along with the 'no such records exist' disclosures. Now the VTRANS agency will incur the \$3,000 in court costs and my attorney fees. A hell of a way to run a circus.

One might ask why did the DPS not use its authority under 202d to require this information and similar information from all utilities in preparation of the draft Ten Year Plan? (VTRANS is not a regulated utility. At least not yet) Which telecommunication utilities as referred to in the bill do not have CPGs?

- VELCO
- VTA
- DPS
- VTRANS
- ECFiber

Recent actions by the Legislature have completed or proposed the dissolution of three quasi-Governmental executive boards:

- Vermont Center for Geographic Information (VCGI)
- Vermont Telecommunications Authority (VTA)
- Enhanced 911 Board (E911 Board)

This amounts to open heart surgery where laproscopic surgery with only a 1/2 inch incision would have been more appropriate.

Another approach would have been to reconstitute these three boards with governor appointees being nominated *subject to the advice and consent of the Senate*. Interim vacancies and appointment decisions could be delegated to the Joint Fiscal Committee. This would reestablish the necessary accountability and alignment with legislative policy and oversight, the lack of which necessitated the equivalent of a bunker buster bomb.

The collateral damage of these dissolve/mothball/merger approaches has not been fully examined. Dispersing the accumulated talent which has staffed VTA and VCGI or served on these important Boards for the most part as volunteers, or demoting the individuals' votes to advisory only, with all their decisions being subject to an over-ride by a Governor appointed Commissioner, is a big mistake.

The E-911 Board can certainly be attached to the Department of Public Safety to achieve efficiencies and cost savings for administrative support and contract administration. The E-911 databases should absolutely not be hosted by either FairPoint, its subcontractors, nor the agency that includes the State Police. This principle guided the E911 database decisions made 20 years ago and they still hold true. The privacy and security of these databases from any possibility of misuse must be paramount. Additional scrutiny and statutes or rulemaking are also required relating to how E-911 data is being transferred into and accumulating in Computer Aided Dispatch and Incident Reporting Systems in a manner inconsistent with privacy principles and current law restricting secondary use of the E-911 data.

One casualty of the E-911 reorganization is the loss of E-911 Board representation in the pending PSB Docket 8390, the FairPoint service quality and network reliability investigation. David Tucker intervened on behalf of the Board without hiring an attorney. The DPS is conflicted by way of being co-petitioner with FairPoint in a five year Incentive Regulation Plan docket.

Another reorganization casualty resulted from the VCGI dissolution. This is the lack of a free standing organization with the GIS management and systems expertise being in place to take on the E-911 database management, updates and map display of an E-911 caller's location in real time. This is currently estimated to cost over \$2M as a subcontract to the FairPoint contract but can and should have been done in house, so to speak. The funding from the USF for E911 database maintenance and management, as well as map display for dispatch could have sustained VCGI, who, as a team, could also have continued to assemble the utility infrastructure layers of the GIS to support telecommunication planning. This is a task that should have been done more than a decade ago.

The VTA, or its soon to be required successor, will be needed to lease, manage and support interconnections with the statewide fiber-optic SONET rinks serving as the core of a statewide fiber build-out. Municipal Union Telecommunications Districts will interconnect and require such statewide infrastructure for peering and backhaul, and for aggregation of purchasing power to buy fatter internet pipes, to multiple providers at internet hotels now located only in major New England cities.

***Existing Law 30 VSA 202c***

*(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section **and section 202d** of this title to:*

- (1) strengthen the State's role in telecommunications planning;
- (2) support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data;
- (3) support the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities;
- (4) provide for high-quality, **reliable** telecommunications services for Vermont businesses and residents;
- (5) provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses;
- (6) support competitive choice for consumers among telecommunications service providers **and promote open access among competitive service providers** on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered;
- (7) support the application of telecommunications technology to maintain and improve governmental and public services, **public safety, and the economic development of the State;**
- (8) support deployment of broadband infrastructure that:
  - (A) **uses the best commercially available technology;**
  - (B) does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology **or result in widespread installation of technology that becomes outmoded within a short period after installation;**
- (9) **in the deployment of broadband infrastructure, encourage the use of existing facilities, such as existing utility poles and corridors** and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures; and
- (10) **support measures designed to ensure that by the end of the year 2024 every E-911 business and residential location in Vermont has infrastructure capable of delivering Internet access with service that has a minimum download speed of 100 Mbps and is symmetrical.**

***Proposed in H-117 - a new 30 VSA 202e***

*(a) Among other powers and duties specified in this title, the Department of Public Service, through the Division for Telecommunications and Connectivity, shall promote:*

- (1) access to affordable broadband service to all residences and businesses in all regions of the State, to be achieved in a manner that is **consistent with the State Telecommunications Plan;**
- (2) universal availability of mobile telecommunication services, including voice and high-speed data along roadways, and near universal availability statewide;
- (3) investment in telecommunications infrastructure in the State that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities;
- (4) the continuous upgrading of telecommunications and broadband infrastructure in all areas of the State to reflect the rapid evolution in the capabilities of available broadband and mobile telecommunications technologies, the capabilities of broadband and mobile telecommunications services needed by persons, businesses, and institutions in the State; and
- (5) the most efficient use of both public and private resources through State policies by encouraging the development, funding, **and implementation of open access telecommunications infrastructure.**

We absolutely need a real telecommunications plan and we need to have the Legislature both confirm its completeness and adopt the revised plan every three years. We need all CPG applications and renewals to be measured for consistency with the Plan by the Public Service Board, as Incentive Regulation Plans and Contracts are now under 30 VSA 226b and 226a respectively. We need a near term moratorium on long term (11 year) CPG renewals until the first complete plan is written and duly adopted by the General Assembly.

Until a bill or a joint resolution passes disapproving of the current so called 'Plan', there is no formal acknowledgment or recognition of the failed process, the incomplete plan, nor will there be any move to begin a new plan. For the Committees of Jurisdiction to continue to disregard the blatant statutory violation of not conducting the required hearings on a Final Draft, further emboldens the Department of Public Service in its neglected obligation and its conflicts of interest.

### **Who is profiting from our recurring telecommunications planning failures?**

Besides the two elephants in the room: FairPoint and Comcast?

The longer that real planning is delayed, the more hemorrhaging of broadband revenues out of Vermont. These are the same revenues which we should be using to reach the 100/100 goal, to create jobs, build fiber, train installers and linemen, finance loan repayment and promote economic development.

Most of the existing copper infrastructure will likely become obsolete and will need to be fully depreciated when fiber reaches every address in Vermont. Telephone, television and internet services will all be provided across a single strand of glass. This massive utility depreciation, as well as the more than \$100M annually being spent now just for broadband, with most of it leaving Vermont, should be analyzed and fully laid out in the Plan. This is necessary in order to be factored into the Legislative finance decisions of how soon we plan to fund and complete the fiber build-out.

I am now convinced that the priority should be on creating a complete, comprehensive and credible Ten Year Telecommunication Plan, rather than the necessary but more arduous task of reforming the Department of Public Service. We need to take the politics out of telecommunications planning and regulation.

As an example, when legislators discovered that the Department of Public Service had not completed the required three year rewrites of the Ten Year Plan since 2004, they passed a bill in 2014 requiring a plan to be adopted by the first

day of September. In the midst of the public hearings on the public comment draft of the plan, we learned that Governor Shumlin had penned two letters to the FCC throwing lavish praise on Comcast and lending his full support to the proposed Comcast merger with Time Warner. The merger would have had substantial impacts in Vermont yet there was no analysis by the Department of Public Service, no mention of it in the draft plan and virtually no record of any interest other than the thousands of dollars in campaign contributions made by Comcast to Governor Shumlin and other elected officials in Vermont.

The conflicts of interest arising from the DPS representing FairPoint in the pending Incentive Regulation Plan while also purporting to represent the public in the service quality docket is another example. The independent public contract advocate provision of 30 VSA 226a must be extended to Incentive Regulation under 226b, and even further, to any proceeding, i.e. Comcast's CPG renewal, where a political position take by the Governor creates even the appearance of a conflict of interest.

The money from the USF proposed for DPS salaries this year would be much better spent hiring a private planning and engineering firm to assemble a credible and complete telecommunications plan draft. Former VTA and E-911 and VCGI staff, exempt or classified, would be kept busy just sourcing the required data and compiling the detailed information on our telecommunication infrastructure, information necessary to be included in such a plan. This cost efficient option could be accomplished through the pared down strike-all, requiring the DPS, or even the JFO, to hire a private contractor to assemble a complete telecommunications plan draft.

Dustin Johnson of Vantage Point Partners, suggests that the most productive approach much be for Vermont to issue an RFP to telecommunications / engineering firms around the country to make proposals for compiling a complete Ten Year Telecommunications Plan draft. A significant difference from past practice, this would be for a telecommunications plan founded upon infrastructure, while also including policy analysis and considerations important to Vermont, i.e. PEG access, impacts in the independent telcos, ILEC depreciation, job creation, government service delivery and other economic benefits.

As a former Secretary of Administration and PUC commissioner, Mr. Johnson has deep insights to offer about the changing telecommunications industry, where we stand comparatively here in Vermont, where we need to go, and how to get there.

Charlie Larkin and I have supplied Mr. Johnson and Vantage Point Partners with extensive documentation, statutory references, reports, plans and current news on Vermont and its history and our present quagmire. Lets take advantage of this opportunity to learn from Vantage Point on what a real plan looks like and how it would serve to move Vermont forward.

Absent the formation of a Joint Information Technology Oversight or a summer study committee, we're heading down the same old road, only now we're in a much more severe MUD season.

Stephen Whitaker  
2015.04.27



From the 1992 report of the Legislative Telecommunications Committee and press:

*“The proposed plan tends merely to describe the world of telecommunications as it exists now, without laying out goals and strategies for achieving them.”*

*“We don't consider this a real plan at this point. And we would just be fooling people if we point at this and say this is a Vermont Telecommunication Plan.” -Obie- co-chair*

*“The proposed plan fails to establish the specific objectives and goals that are needed if it is to serve as the basis for significant regulatory decisions, such as any new Vermont Telecommunications Agreement.”*

***“One of the recommendations is that monitoring of telecommunications issues be continued permanently by a joint committee of the Legislature.”***

*“Calling the report "aggressive" DPS Commissioner Sedano emphasized that his **department does not have to follow the recommendations of the legislative committee nor seek approval of the Legislature**”.*

From press reports 1992

<b>Best</b>	<b>Next Best</b>	<b>Mediocre</b>	<b>Bad</b>	<b>Worst</b>
SCENARIO A	SCENARIO B	SCENARIO C	SCENARIO D	SCENARIO E
Pass Joint Resolution rejecting 10YP				
Pass bill authorizing Municipal Utility Districts	NG-911 contract on HOLD		Status Quo	
Pass bill re-convening/creating JITOC			VTA dissolves	VTA dissolves
	E911 Board remains Executive		10YP ignored / tolerated	10YP accepted
Suspend QoS docket pending Public Advocate being appointed re: E911	E911 operations to DPSafety		E911 Board becomes ADVISORY	
Extend Intrado E911 contract 1-2 yrs	Pass bill Municipal Utility Districts		E911 governance to DPSafety	Div.Connectivity in Dept.Public Service
Require Independent Advocate for both 226a and 226b dockets				Connectivity Funds awarded as grants
CPGs extended, 1-2 years, pending plan completion and adoption, NOT 11 years	Revolving Connectivity Fund		Div.Connectivity in AoCommerce	No meaningful 10YP in effect
CPGs required 2B consistent w/ 10YP in all PSB proceedings	USF Funds for E911+Connectivity pooled		\$11M Fragile E911 from FairPoint	No meaningful DPS oversight
Legislature ADOPTS 10YPlan after finding of completeness and consistent w/ 202c GOALS	CAF funding routed to Connectivity Fund		Dark Fiber Mgmt. Contract awarded	
	Connectivity Funds awarded as LOANS		Orange County FiberConnect	No progress toward 100Mbps Symmetric Goal
<b><u>JITOC Scope</u></b>			Hardwick FiberConnect	Incentive Regulation Plan approval undermines QoS & Broadband
JITOC meets throughout Summer/Fall	<b><u>PSB Investigation(s) Scope</u></b>		Newport FiberConnect	No teeth to req. 10YP for 226a, 226b IRPs
Full performance review of DPS & PSB	OPEN ACCESS implementation		Capitol Complex fiber ?? National.Life Fiber ??	Fragile E911/NG-911 from FairPoint
define OPEN ACCESS goal and requirements	Dark Fiber rate regulation		VTRANS Fiber ??	FairPoint builds more ADSL now using public CAF/USF funds
All CPGs required to be consistent w/ 10YP	Inter-Carrier SONET requirements		SoVerNet as State's fiber vendor	
Independent Advocate for 226b dockets	Uniform Pole Attachment Rates		FairPoint builds more ADSL now using public CAF/USF funds	
Review 10 YP goals and statutes and PLAN	Pole Attachment Make-Ready		Continued undermining of Oversight	Continued undermining of Oversight
PEG \$\$ linked to RoW use vs. cable franchise	GIS database of Telecom infrastructure, poles, fiber. Copper, conduits, Right of Way			
Review E-911 contract w FairPoint	Fiber Inventory / count of strands dark, lit and reserved; SPEEDS			
Review Div.Connectivity Report	Backup Power Inventory / requirements / run time minimums			
Review APRA exemptions 4 telecom	Equalize Carrier of Last Resort			
DII Internal Service Funds	Eliminate CATV franchise area boundaries			
5 Year State IT Plan & Health Care IT Plan				
Cost study of state wide fiber build-out				
Recommend Statutory Changes for 2015				

## **E-911, Where are You? Fiber Optic Lines, Where are you?**

Should the E-911 operations be consolidated with Department of Public Safety?

Should the E911 database of everyone's phones and locations be with the State Police agency?

Should the E-911 Board continue as an executive governing board?

or

Should the E-911 Board be reconstituted as an advisory board?

When E-911 was created nearly twenty years ago, by design, it was not located in the Department of Public Safety; diverse and local control was a priority consideration; the database was to be owned by the State, not NYNEX/New England Telephone; and a high priority of importance was on privacy protection of the E911 database, precluding other uses such as marketing or police investigations.

The E911 Board was designed with broad representation of the full range of emergency service providers as well as state agencies, local police, fire and EMS. The diverse ownership and governance was, and continues to be, a high priority for efficient and effective operation of this massively important and life saving technology infrastructure.

Presently there is a proposal/report from the Administration filed December 15, 2014, to merge E911 functions into the DPS and also to close both the Derby and the Rutland PSAPS.

Closing of PSAPS is an entirely different and distinct discussion than where the E911 functions are to be housed and whether or how we maintain the authority and participation of the Enhanced 911 Board.

A different suggested scenario might be as follows:

1. Keep the E-911 Board as it is now constituted, with three public members and a representative from Sheriffs, Municipal Police, State Police, Firefighters, Towns, and EMTs. Retaining the E911 Board as is, independent of the Department of Public Safety, preserves the current stakeholders' local and user control. Retain the status and authority as an EXECUTIVE, decision making board.

The present E-911 Board:

Lamoille County Sheriff Roger Marcoux, Jr. - Sheriff's Association  
Representative

Capt. Donald Patch - Department of Public Safety

Jerome Pettinga - Public Member

Vacant - Public Member

Police Chief Gary Taylor - Municipal Law Enforcement

Fire Chief Robert Schlachter - Firefighter

Kate O'Connor - VLCT Municipal Official

Heather Dale Porter - Emergency Medical Services Provider

Steve Gold - Public Member

2. Transfer the operational management of the E-911 system to the Department of Public Safety, EXCEPT FOR THE E911 geographic locations database. This change places the E911 system management in the hands of an agency with long and successful record managing the State's Digital Microwave System. Telecommunications experts are available 24/7 to keep those radios, telephone circuits and microwave transceivers running, complete with backup power when needed. The State Police can do a great job of reviewing the engineering design, reliability, redundancy, and failure reporting requirements necessary of a critical E-911 system. This engineering review is a critical step that was skipped in the design and award of the NG-911 contract recently awarded to FairPoint. This \$11M five year contract was awarded just prior to the statewide failure of FairPoint's network the day after Thanksgiving.

3. Transfer the E-911 geographic database operation and maintenance functions to the Vermont Center for Geographic Information. VCGI is a public non-profit supported in part by the State of Vermont (through the property transfer tax). As VCGI is slated to merge into the Agency of Commerce and Community Development very soon pursuant to Section E.800.1 of Act 179 of 2014 (appropriations bill) ***this section, pages 225-230, would need to be revised or rescinded by an Act of the Legislature nearly immediately.***

Transferring the E-911 database in the VCGI accomplishes several goals.

First, it places the geographic database operations and maintenance in a state created and Board governed public not-for profit corporation with extensive expertise in GIS.

Second, since the share of the USF funds supporting the E-911 database operations would also be transferred either directly or through DPS, to the VCGI, that entity would receive a necessary and consistent funding source at a time when the federal grant revenues that were supporting VCGI's activities are drying up.

Third, it will keep the E911 database secure and out of the hands of the Police operations and investigative functions of the Department of Public Safety, removing temptation for misuse and, with a few statutory changes to the VCGI data distribution mandate, ensuring privacy.

4. Contract with an single vendor to provide the hardware and software support that manage the call answering and map display portion of the E-911 system, responsible for 1) designing the system, 2) the purchase of PSAP equipment and supplies and 3) for the leasing of all necessary communications circuits required from those telecommunications providers, telephone, CATV/VOIP, cellular and others, required to support the system.

FairPoint, since it provides the majority of the circuits, should be

excluded from bidding for the PSAP equipment contract, as being both provider of the necessary circuits, and managing the systems reliant upon them, creates too many opportunities for gaming the system or failing to report circuit or system-wide interruptions as occurred last November 28th.

A Statewide Utility GIS component would include more than the location of roads, driveways and buildings. It would also include a database of poles and conduits of electric and communications companies. This would mean, for poles, at least : the pole number; pole height; pole type; location and description of wires/cables/fiber, including names of pole attachment tenants; rental rate for each tenant; age; cost; percent depreciated; depreciation rate. Similar data would be provided for gas lines, conduits, drains, sewers, public rights of way etc.

This solution solves a number of problems now before the legislature: VCGI can remain independent and have new and steady funding sources. This allows the VCGI team to forego the selling of services to other agencies and focus on it core mission: the setting of standards and database design, quality assurance, data distribution, E911 database maintenance, and capacity building of GIS personnel within all state agencies seeking to build internal GIS skills and analysis capabilities.

The proposed \$80,000 in consulting that VCGI intended to do for the DPS can now be put out to bid for private sector companies providing GIS services. This solution also finally solves a long-standing problem: public/private competition, which is inherently unfair. A state funded entity should not be selling services in competition with private sector businesses. The public funds supporting staff,rent and equipment makes for the most egregious form of unfair competition.

The building of the Utility Infrastructure databases, a long overdue and crucial component of the Vermont GIS effort can get fully underway with the participation of all regulated utilities. VCGI can and should be directed to collate existing geographic datasets from the utilities, set

standards, assess quality, identify gaps, and either let contracts to acquire new data, or coordinate the utilities collection of that data. Database creation required beyond the available existing data can be billed to the regulated utilities. The Public Service Board has statutory authority for a bill-back to these utilities to cover the costs of regulatory activities.

The utility layers creation and addition to the statewide GIS will support more efficient regulation and planning for all utilities as well as support the essential and overdue Telecommunication Plan. The goal of achieving statewide symmetric broadband at 100Mbps in the next nine years cannot possibly be accomplished without the use of GIS as a planning tool.

In summary, the three sources of funding to support VCGI remaining an independent non-profit are:

Existing Property Transfer Tax revenue

Utility bill-back contributions for utility database creation

USF funding redirected from E911 staff functions to VCGI for E911 database maintenance.

Stephen Whitaker

with assistance from Charlie Larkin

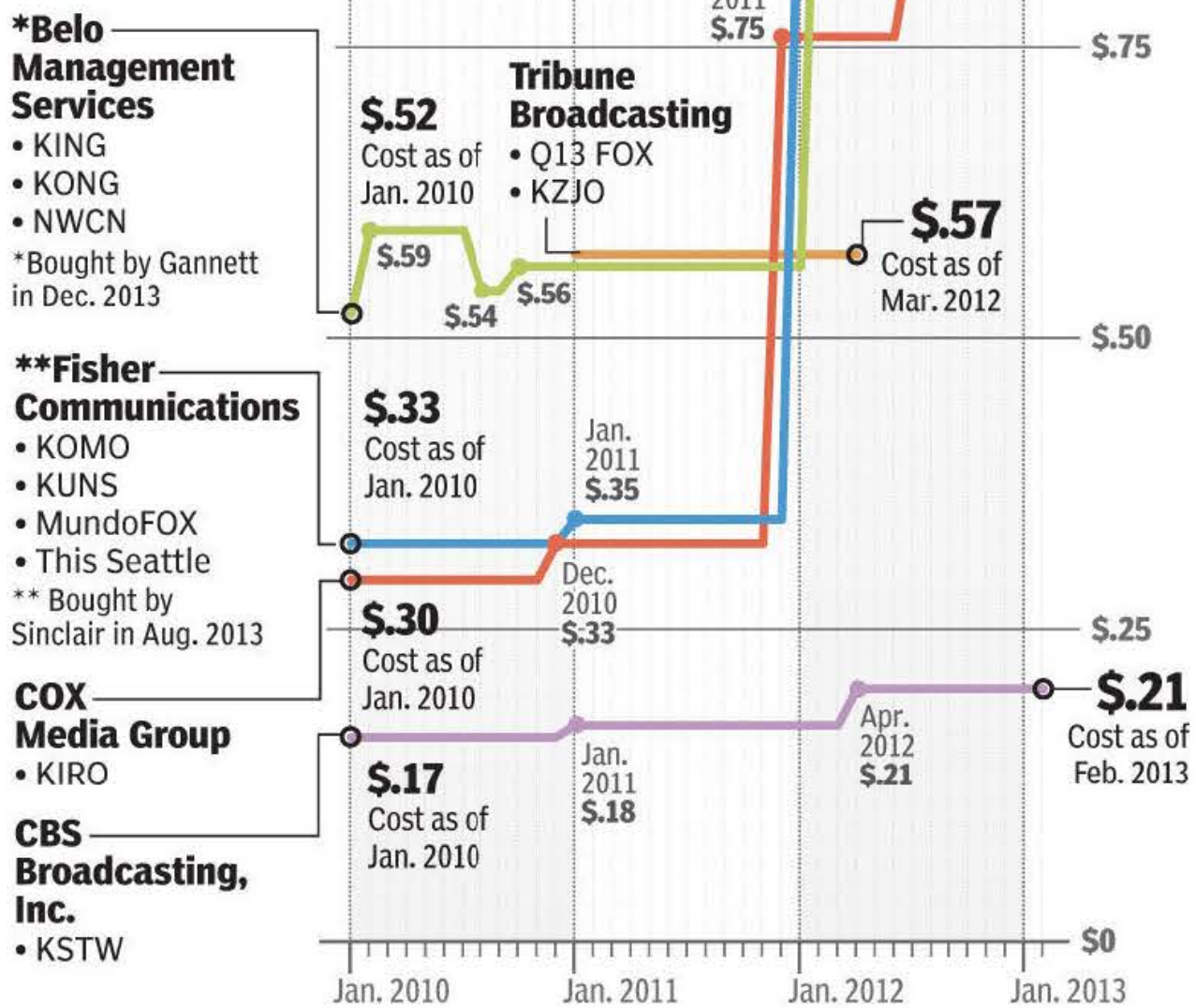
2015.01.29

# Click customers paying more due to retransmission fees

Executives at Tacoma's taxpayer-owned Click cable system have said local broadcasters are seeking higher and higher fees with each contract renewal. Using a combination of public records and a for-profit database, The News Tribune has calculated the increases in retransmission consent fees, which are charged per subscriber each month. For Click's subscribers, the fees add up to hundreds of thousands of dollars per year.

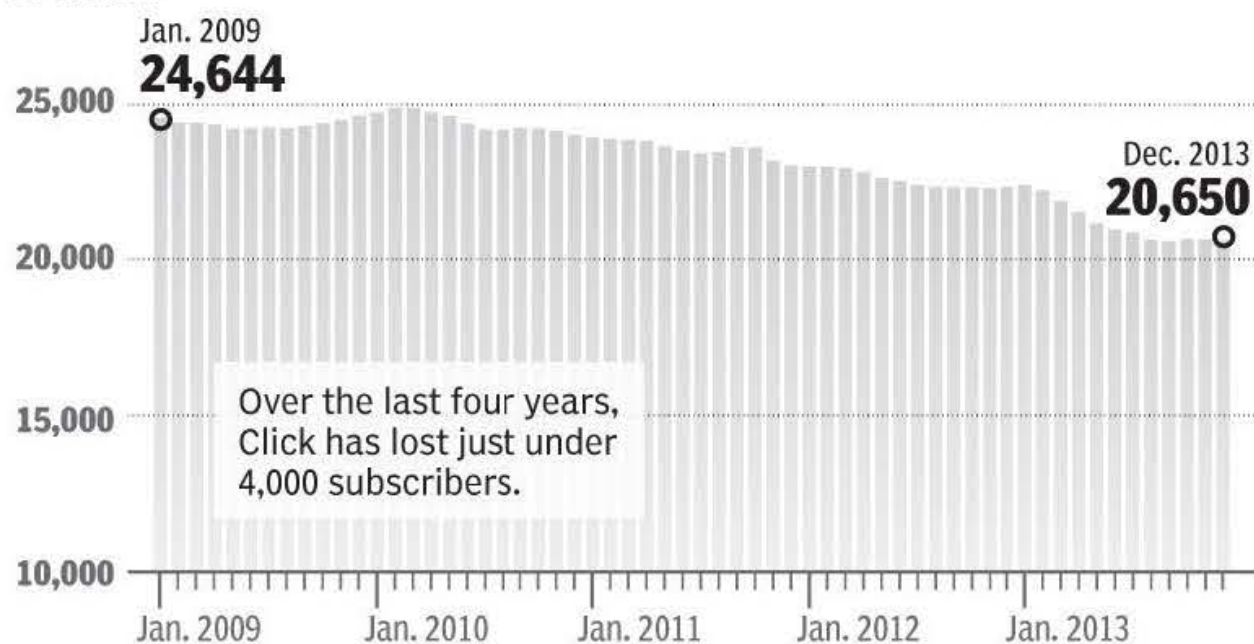
## RETRANSMISSION FEE INCREASES

BY MONTH



## DECREASE IN CLICK SUBSCRIBERS

BY MONTH



Source: Click

Staff graphic



Jim Porter,  
and Roger Marcoux:  
AND OVERSIGHT LEGISLATORS

Roger, Please provide me with a copy of the Mike Smith consulting agreement including any attachments.

As agreed, I have attached the E911 Board's RFP, the FairPoint proposal/response to the RFP, the Cover letter to the FairPoint proposal, as well as excerpts from the FCC compiled listing of Text to 911 implementations.

As you will see detailed below, there are substantial problems possibly warranting voiding of the contract.

Roger, please forward the email with attachments to your attorney general reviewer.

Senator Ashe may have been misinformed that Mike Smith is acting director of the E911 Board. As it has been reported that Mr. Smith will recuse himself in all matters relating to FairPoint's contract, he may only be focusing on the analysis of call centers, dispatch, DPS merger and funding issues.

ISSUES with the E911 contract:

FairPoint did not, as required by Request for Proposals, in Section 6.2.2, identify in its cover letter one very significant area of exception (Intellectual Property) to the State of Vermont requirements.

This is important as Vermont, when the legislature first created E911, took the precaution of crafting into statute, that **the State would own the E911 databases** as NYNEX, at the time, fully intended to create and own the database and thus lock in future contracts or force recreation of the database if another vendor was subsequently selected. The (expensive) database contains the exact geographic locations of all buildings and all telephone numbers registered to a fixed location in Vermont.

Additional E911 related databases include the emergency service zone boundaries where every possible combination of Fire/Police/EMS might overlap.

Intellectual property ownership, hosting entity and location, security and protection from unauthorized (fishing expedition) police queries, as well as establishing procedures for access to all records relating to an individual by that individual, as well as a right to petition for correction or expungement of extraneous, incorrect or obsolete data stored in Computer aided dispatch and Incident Reporting Systems are all issues requiring further study and strict legislative resolution.

From the attached RFP:

**6.2.2 Exceptions to Terms and Conditions for Technology Contracts.**

If the Vendor wishes to propose an exception to any terms and conditions set forth in this RFP, including the Standard State Provisions for Contracts and Grants, **it must notify the State in the cover letter.** Failure to note exceptions will be deemed to be acceptance of the State terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.

FairPoint responded to the Intellectual Property section included in total below, as follows:

*"FairPoint cannot agree to this section as written and retains all of its rights at law and equity regarding ownership of intellectual property or that of its suppliers/contractors. "*

FairPoint's cover letter is attached (dated May 15, 2014)

FairPoint has also recently disclosed that they cannot provide the SMS Text to 911 feature as required and as proposed due to issues with implementing the TCC (Text Control Center) with the Solacom equipment. David Tucker acknowledged this and stated that FairPoint would resolve this issue by subcontracting with one of the only two vendors who are able to provide this solution; Intrado or TCS. (Both were losing bidders for the Vermont contract) Neither of these two vendors were identified as subcontractors in the FairPoint proposal as required in the RFP.

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**3.5.2. SMS Messaging (SOW 3.5.2)**

It is a requirement that the solution support native IP text messaging, with text calls delivered through the same interface and equipment as are voice calls, regardless of the carrier that delivers the text messages. It is a requirement that the solution allow for two or more PSAPs to have text messages delivered, and be able to increase the number of PSAPs that can accept text messages upon request from the State. In addition, the solution must provide a failover so that if one of the PSAPs designated to take text messages becomes unavailable, text messaging will be rerouted dynamically to any other text-enabled PSAP automatically. How many PSAPs must initially be text enabled and the failover strategy will be determined as part of system implementation planning. Describe how the proposed solution will meet this requirement.

*FairPoint Communications Response:* FairPoint understands and complies. The proposed solution includes interfaces per ATIS/NENA standards that allow for delivery of SMS 9-1-1 calls by Carriers over a SIP/MSRP NENA i3 interface. The gateway then distributes the SMS 9-1-1 calls to the responsible PSAP.

Transfers of SMS 9-1-1 calls between call takers and between PSAPs on the Vermont system is supported. SMS call distribution utilizes a dynamic call flow policy routing function based on provisioned routing rules. Routing rules can be adjusted by administrative staff as required to allow for the addition of PSAP and/or call takers.

**3.5.3. Outgoing Text Capability (SOW 3.5.3)**

It is a requirement that the proposed solution include the ability for call takers to initiate a text session so that they have an alternative way of reaching out to abandoned wireless calls. The solution must track, record or log all such text session so they are available for review through the reporting component of the proposed solution as if they were a text session initiated by an individual using text to 911 to contact the PSAP. Describe how the proposed solution will meet this requirement.

*FairPoint Communications Response:* FairPoint understands and complies. The proposed solution supports the capability for a call taker to initiate a text message to a cellular device from the same area of the call taker screen that handles TEXT calls. The system will use the NENA i3 Logging Service Functional Element to capture all events associated with a 9-1-1 call. The SMS 9-1-1 call information, as per all other 9-1-1 calls, will be captured in the included MIS system. The MIS system can generate reports as required.

**3.5.4. Text Translation Software (SOW 3.5.4)**

It is desired that a means to translate foreign languages that are sent via text message be provided. Describe whether and how this can be accomplished.

*FairPoint Communications Response:* FairPoint understands and complies. Our proposed solution allows the translation of text by using a specific browser panel, locked down to allow access to one web service, and restricted to only, the authorized Call takers. Call takers copy text from the text call handling panel and paste it into the translation browser panel for translation. Text can also be copied from the translation panel back to the 9-1-1 text call handling panel. The web translation service can either be an instance of translation software running on servers within the NG9-1-1 ESInet, or, can be Internet based translation service i.e Google translations that are accessed via a secure relay method. For security reasons, in both cases the call takers browser accesses a web service in the ESInet and is never directly connected to a public-Internet based service.

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**3.23. Intellectual Property/Work Product Ownership (SOW 3.23)**

The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under a Contract, including, but not limited to, all data that is generated under a Contract as a result of the use by a Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by a Contractor (State Information), and all other rights, tangible or intangible (collectively, State Intellectual Property). A Contractor may not use State Intellectual Property for any purpose other than as specified in a Contract. Upon expiration or termination of a Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own

benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, a Contractor shall be required to immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein. Without any additional cost to the State, a Contractor shall be required to promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product.

Work Product shall mean any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with a Contract, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during a Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted a license to any such Contractor Intellectual Property that is incorporated into Work Product.

The Contractor shall not sell or copyright a work product or item produced under a Contract without explicit permission from the State.

**If a Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without express written prior authorization by the State.**

***FairPoint Communications Response:*** Because this is not a work for hire or time and materials solutions whereby intellectual property is being created and sold and this is a service offering, much of this section does not apply in FairPoints opinion. **FairPoint (or its suppliers/contractors) will retain any and all right, title and interest in any intellectual property now owned or hereinafter created.** To the extent use of intellectual property owned by FairPoint or its contractors is needed as part of the services, FairPoint will ensure that the state has an appropriate license to use such property for the duration of the contract term or procure a comparable license in order to deliver the same or substantially the same services. Any transfer of ownership of any right, title or interest in any work performed and/or service delivered (including without limitation software, processes, etc.) must be expressly agreed to in a duly signed writing transferring such ownership. FairPoint cannot agree to this section as written and retains all of its rights at law and equity regarding ownership of intellectual property or that of its suppliers/contractors.

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#### 4.1 Corporate Background (RFP 6.5)

Provide details of the company, including company size and resources, details of corporate experience relevant to the proposed project, and a list of other current or recent State projects. If a Vendor intends to use subcontractors, the Vendor must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

***FairPoint Communications Response:*** FairPoint understands and complies. FairPoint is built upon the histories of local companies with more than 100 years of combined telecommunications experience. With FairPoint you have a local presence of approximately 450 local employees and more than 97 local locations throughout Vermont to provide timely responses for your installation and repair needs. Our services are provided over 100% FairPoint-owned network facilities. Our track record, supporting the State of Vermont Government at over 600 locations, including 80+ with Carrier Ethernet Services, demonstrates FairPoints quality service. Our response to Tropical Storm Irene demonstrated the importance of FairPoint coverage throughout Vermont. The States role as our anchor customer enables FairPoint to be as responsive as we are to all customers in all corners of the State.

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**Subcontractor:** FairPoint is subcontracting with the innovative, industry-leading companies: Solacom, GeoComm, and 9-1-1 DataMaster. Fair Point has partnered with Solacom and GeoComm to provide the critical NENA i3 functional components for the ESInet. GeoComm, in particular, was chosen to provide the ECRF and LVF functionality for the proposed ESInet, based on their proven solution deployed in North Carolina, their leadership in NENA ICE testing of the ECRF/LVF Functions. FairPoint will provide Solacom's reliable, highly available, hosted NG9-1-1 Emergency Services Call Delivery solution which meets 99.999% up-time requirements for all major functional elements and ensures the ability to comply with call delivery Service Level Agreements (SLAs). 911 DataMaster will provide legacy ALI database functionality.

**GeoComm**, a Granite Equity Partners company, was founded in 1995 to provide local governments with turnkey emergency 9-1-1 development services. Over the subsequent 18 years, the company has grown to serve more than 12,000 dispatchers over 750 emergency 9-1-1 call centers in the United States, helping to keep more than 84 million people safe. Today, GeoComm has a national reputation as a leading provider of Geographic Information Systems (GIS) software, services, and consulting services. GeoComms software systems route emergency calls to the appropriate call center, map the callers location on a dispatchers map, and guide emergency responders to the accident on mobile displays within police, fire and ambulance vehicles.

**Solacom Technologies** began in 1982 when Franz Plangger founded CML Technologies and established a cadre of engineers who rapidly became known around the world for innovative solutions in critical communications. Following the sale of CML (which became PlantCML, and later, Cassidian Communications) in 1998, Plangger and team founded Solacom Technologies and continued a successful track record as one of the world's leading manufacturers of critical communications systems.

Today, with a heritage of more than 30 years of expertise in designing and developing rugged systems for critical communications, Solacom is an industry leader when it comes to experience in configuring, installing, and supporting Next Generation 9-1-1 system solutions for public safety. Our successful track record includes not only small 2-4 position public safety answering points, but large ESInets serving several counties, right on up to a state-wide network of PSAPs.

Solacom has over 1100 positions across more than 130 sites that are NG9-1-1 ready in the United States. In terms of large NG9-1-1 ready deployments, Solacom is a market leader with hallmark sites such as the State of Maine ESInet and NG9-1-1, Indiana NG9-1-1 Hosted Network, Illinois NG9-1-1 Network, CAPCOG (Texas), and Kentucky CKY911net Hosted Network.

Solacom is the manufacturer of the Emergency Services Platform ESP portion of the proposed solution. The ESP resides at the core of the solution and provides the systems call routing and call handling functionality. Call takers handle emergency and administrative calls using the Guardian call taker interface (Guardian); calls are routed to the PSAPs by the Solacom Emergency Services Routing Proxy (ESRP).

**911 DataMaster** is a major player in providing standalone ALI database solutions in the E9-1-1 industry with over 25 years as an E9-1-1 Database software solution provider. Other major LECs in the country, such as Century Link, rely on the 911 DataMaster ALI Database software solution to support the emergency services they provide. FairPoint carefully chose 911 DataMaster to ensure the Bureau would be comfortable transitioning E9-1-1 database services, to include the process of facilitating carrier transition, to this new platform. FairPoint uses 911 DataMaster in our State of Maine NG9-1-1 contract.

#### CONCLUSION:

With the included and attached information, you should be able to confirm the identified deficiencies.

I appreciate your taking the time to complete the due diligence, even at this late date.

Stephen Whitaker  
2015.04.16

Roger,

The questions you need to ask:

Isn't the Maine text to 911 system running on the obsolete TTY protocol? This was told to me by FCC staff person.

Doesn't the Vermont RFP require the new NENA i3 standard?

Fairpoint would need to subcontract the text to 911 feature to either Intrado or TCS Info From D.Tucker and Maine PUC staff

Doesn't the Vermont RFP require that they identify any subcontractors?

Did Fairpoint do so?

## **Telephone Pole Dancing, and so on.** *April 7, 2015*

As of this date, three important telecommunications bills lie dormant in the House Commerce Committee. **H-224, H-352 and H-353** while **H-117** is in Senate Finance.

As background, **Act 53 of 2011**, Sec. 9, mandated the Public Service Board, within 90 days from passage, institute rulemaking to address an expedited pole attachment dispute resolution process. The Public Service Board ignored the mandate. The Department of Public Service dropped the ball as well, holding only one workshop. end of story. The remainder of Act 53 is still a good read as it offers both a humorous and unfortunate perspective on other accomplishments, mis-steps and assumptions such as open access fiber, broadband completion dates & speeds, and the VTA's fate.

The Legislature apparently didn't notice that neither the Department of Public Service nor the PSB had resolved this critical problem fundamentally impeding Vermont's fiber optic broadband build-out efforts. Anti-competitive conduct by pole owner/tenant utilities, using intentional and strategic delays, continues to run rampant in this field.

This year, two bills, **H-224 and H-352** propose the same 2011 strategy: direct the PSB to conduct rule making for both pole attachments and conduits. Four years later, it's a telling failure of legislative oversight and attempt at a do-over. Both of these bills however languish in the House Commerce Committee.

In 2013, a request to the DPS for the then current Ten Year Telecommunications Plan, as well as the two prior editions, came up empty. The Department seemed to be unaware that it had not completed the statutorily required three year re-writes since 2004. Chris Campbell had authored the 2004 plan and had subsequently left in 2008 to head the VTA (Vermont Telecommunications Authority). The 2004 Ten Year Plan, among many other issues, had failed to delineate a strategy to achieve the statutory goal of Open Access for competitors or to resolve the pole attachment issues, thereby promoting competition. Again, ten years later and a massive missed opportunity, yet another dramatic failure of legislative oversight.

The VTA, beginning in 2009-2010 supported and/or shepherded several large Federal BTOP grants to Sovernet, VTel and VCGI. Neither VTel nor Sovernet were, however, required by the terms of those grants to provide affordable open access to their new publicly funded fiber infrastructure. There was no current and detailed Ten Year Plan! *"The Plan shall be for a ten-year period and shall serve as a basis for State telecommunications policy."* VCGI's publicly funded fiber and broadband mapping data is also still claimed to be exempt from disclosure.

By 2014, the Department could no longer avoid or conceal the missing Plans and thus began public hearings and surveys with a VIT hearing on a snowy Friday night in February. A total of three people showed up across all VIT sites. Charlie Larkin and myself, in Montpelier, and one other in Brattleboro. Five DPS staff persons were also present and Commissioner Recchia was '*virtually present*' from Randolph. Charlie Larkin and I offered detailed testimony on interconnection of Cable TV systems, the public's right-of-way and the future of PEG access. A few potential witnesses later complained that they had arrived at their local VIT site(s) to find them locked and dark. This hearing was transcribed and shared in very low-resolution VIT quality video.

**Act 190 of 2014** again required the DPS to complete a Ten Year Telecommunications Plan, this time by September 1, 2014. Public hearings were held around the state, most of them attracting less than a handful of people, Charlie and I attended all except for Rutland. Extensive testimony was offered about the need for fiber optic build-out, the problems of pole attachment make-ready and other topics related to unnecessary and wasteful fiber overbuilds, backup power, PEG access, education and economic development. These hearings were all transcribed and hi-def video was recorded.

The DPS held those hearings on the "public comment draft" but did not complete and circulate for review a final draft as required by statute 30 VSA 202d. When this critical omission was called to the attention of the Committees on Finance and Commerce at the State House public hearing held on August 28th, the DPS was not asked to address the issue. Further testimony at this joint committee hearing detailed the multitude of failures of the draft and the total lack of the document's usefulness as a strategy or as a meaningful planning document.

All of the public testimony at the hearings was simply ignored. The DPS had carried on a charade and the Committees of jurisdiction did nothing to remedy the problem. A final draft was never issued nor were the required public hearings and joint legislative committee hearings on a final draft held, as required by law.

The Legislative Committees in effect gave the Department a free pass, a wink and a nod, signaling loud and clear there is no penalty for ignoring the law. Worse yet, Vermont is still without a strategic telecommunications plan or vision.

The **House passed H-117** now rewards the Department of Public Service with a new 'Connectivity Division' and Director, to (confidentially) inventory and map Vermont's telecommunications infrastructure and to award grants to local exchange companies to build more of yesterday's copper "broadband" to fill in the gaps. This is in direct conflict with the statutory goal of not investing in soon to be obsolete technology. The new Connectivity Division's staff salaries are to be funded, at least for the first year, by robbing funds from the Connectivity Fund, USF funds targeted to finish connecting



the thousands of Vermonters who do not yet have access to even the slowest version of so-called 'broadband'. (768k/200k). The new FCC broadband definition is 25M/3Mbps.

Another poorly thought out implication of **H-117** is the conflicts that are inherent with the DPS, whose job it is to regulate the utilities, becoming the 'Santa Claus' doling out grants to them. But let those grant applicants beware, speaking up as to the inadequacies of the Ten Year Telecommunications Plan or the planning process might severely impact your eligibility for award of those grants!

Also of note: in late 2014, lacking both a Ten Year Plan for network reliability standards and diverse routing requirements, nor an independent technical engineering review, the E911 Board entered into a five year \$11M+ contract with FairPoint for E-911 emergency calling services. The Public Service Board has since opened an investigation into the massive FairPoint network failure last November 28. Scheduled hearings in this docket will not be held until this Summer, after the existing working E-911 system is dismantled. FairPoint's responses to DPS discovery detailing the scope and causes of the failure are claimed by the DPS to be exempt from disclosure under Vermont's Access to Public Records Statutes.

The third telecommunications bill languishing in Commerce, **H-353**, would authorize in statute the creation of Municipal Telecommunications Union Districts, similar to inter-local contracts, which ECFiber is presently. The distinction would enable greater access to financing as the "MUD" is a known entity by those markets.

The current, incomplete and useless Ten Year Telecommunications Plan has many other ramifications impacting PSAP consolidation, school district consolidation options, or not, and almost all other dimensions of government and NGO service delivery and economic opportunity in Vermont. The lack of any awareness of this missed opportunity by the Agency of Commerce and Community Development, (and of the approximately \$8-9 Million/mo. swept out of Vermont by Comcast internet revenues alone) speaks volumes. This should be compared and contrasted with the statutory goal and the ECFiber model of building fiber to every Vermont premises, sooner than later, creating hundred if not thousands of well paying jobs, as well as demonstrating the long term viability of a wide range of Broadband based economic development, artistic and education initiatives.

That would be a real plan.

Stephen Whitaker

2015.04.07

## **VELCO Fiber and how it factors into Vermont's Telecommunication Planning Process.**

by Stephen Whitaker

The news article on VELCO's fiber network from VPR.net, published January 16, describes just one of many examples of what is missing from the recently adopted Ten Year Telecommunication Plan. The 'Plan' should be rejected by a Joint Resolution of the Legislature. Future plans should be adopted by the Legislature and not the Department of Public Service, which allowed ten years to pass without writing a plan, and then adopted an insufficient plan. A finding that the plan is complete, made by either the Public Service Board or the Legislative committees of jurisdiction, (GovOps, and/or Commerce/Finance) should also be required prior to adoption. The plan must detail specific strategies to accomplish the statutory goals of 202c. These recommended measures will require changes to the statutes 30 VSA 202c and 202d.

The 'Plan' presented same day as VPR's story, to the Senate Finance Committee should be scrapped and begun anew. The Department of Public Service knowingly and willfully adopted the plan without holding public hearings on the 'Final Draft' as is explicitly required by statute, 30 VSA 202d. The DPS also did this while a petition for a Five Year Incentive Regulation Plan for FairPoint is pending before the Public Service Board and after arguing against appointment of an independent Public Advocate in that docket. As the Department is a signer, and therefore a co-petitioner for approval of FairPoint's IRP, there is an egregious conflict requiring independent representation for the Public, traditionally the DPS' role. Under the statute, for both Contract and Incentive Regulation Plans, (30VSA 226a & 226b) both must be found by the Public Service Board to be consistent with the Ten Year Telecommunications Plan. This is but one reason why the document and it's completeness is so important.

The Department may have compiled a hollow and useless 'Plan' to not run afoul of the pending Incentive Regulation Plan with FairPoint. The DPS then argued against the need for appointment of an independent

public contract advocate when it was suggested on the record by the Public Service Board chairman, Jim Volz. This is a most glaring example of how compromised the present Department of Public Service is, both legally and ethically.

The Legislature is now obligated to devise a strategy to remedy this mess and implement vigorous and on-going oversight. The same situation arose in 1992 with New England Telephone, VTA2, Governor Snelling's untimely death, Louise McCarren's departure from DPS, resulting in the intervention of the Legislature, which created a joint committee. The Joint Committee, working over the summer, took extensive testimony, made findings and recommended changes to the Telecommunications Plan and statutes to the full legislature.

Some of the other missing components of the Ten Year Telecommunication Plan (among many) are a comprehensive analysis of State Government networks and needs, a comparisons of costs with other states; a detailed reliability analysis; recommended reliability requirements, architectures, best practices and reporting requirements, including verification procedures. These plans, had they been completed, might have prevented the entire Vermont telephone network from failure the day after Thanksgiving. They would also have included standards and requirements for Vermont's Enhanced 911 system that would have assured that the \$11M contract recently awarded to FairPoint, and the resulting "Next Generation 911" system, was not as vulnerable as has now been demonstrated. The 'plan' similarly fails to examine the uses or potentials of the State's digital microwave network managed by the Department of Public Safety, the obsolete Vermont Interactive Television network, the State Colleges' and UVM's data networks, Internet2, VTRANS fiber in the I-89/I-91 interstate median, the Capitol Complex fiber ring, etc.

A statewide build-out of fiber optic infrastructure to every address in Vermont by 2024 is now a statutory goal. This goal, passed in Act 190 of 2014 (symmetric 100Mbps) now necessitates a detailed and comprehensive strategy to accomplish it. The strategy must be laid out

in a Ten Year Telecommunication Plan. Such a detailed strategy would necessarily require the use of facilities from VELCO, FairPoint, Comcast, V-Tel, Green Mountain Power, Level3, SoVerNet, VTRANS and the independent companies such as Waitsfield Telephone / Champlain Cable, TDS, Franklin, Duncan Cable etc. None of these networks were inventoried, examined nor even surveyed for infrastructure maps by the Department in preparing the new 'plan'.

The Ten Year Telecommunications Plan is required by statute to be fully revised every three years, with surveys of need, active public participation, and public and legislative hearings and oversight. Authority to require submission of infrastructure information from all regulated utilities, under the supervision of the Public Service Board, including protection for legitimate, not overly-broad or exaggerated claims of proprietary and security information, are already included in the same statutory section.

The Department, the E911 Board, VCGI, VTRANS and others are presently withholding information under alleged 'trade secrets' exemptions from public records laws, information which is necessary to investigate prior failures, plan and assess the reliability and weaknesses of our public networks and strengthen our public safety networks. This lack of access to information, conflicting statutes exempting disclosure of telecommunications infrastructure information and a lack of planning and oversight, have all created this perfect storm.

The Department of Public Service, the Legislature and the Vermont Telecommunications Authority all dropped the ball. This unfortunately occurred at the critical time when \$250M in federal grants of public funds was being invested in Vermont's telecommunications infrastructure, which we now find has resulted in publicly funded fiber optic cables across the State which are not subject to Open Access requirements, a requirement which has all the while been defined as an explicit goal in statute, and which the Ten Year Telecommunications Plans were required to have contained detailed strategies to accomplish.

Hopefully, this year's Legislature will recognize the scale of these problems and begin to remedy what amounts to a series of enormous and costly mistakes, and more importantly, missed opportunities which may come back to haunt Vermont's education and economic development efforts for the next decade or more.

Stephen Whitaker

2015.01.17 *v1.3b*

Good Morning Senators,

Thank you for the opportunity to speak to you regarding H.117.

I am the retired Department of Public Service Telecommunications Engineer, having held that position for over thirty years. I have testified as an expert witness in numerous Vermont Public Service Board Dockets related to telecommunications, both telephone and cable television.

I wrote the first CATV line extension formula and the Pole sharing equation. I created the method by which the CATV companies' expenses and revenues were divided between intra-state and inter- state, and between basic and enhanced services.

I also served as the E-911 Engineer, working with the first two E911 Directors, both pre- and post- independent agency status. I was a member of two E911 design committees.

I have testified in Maine, Rhode Island and Connecticut before state regulatory commissions regarding telephone company service rules and regulations.

I will speak to some of the issues which came to mind as I read H.117. These are by no means all of the issues I noted, but these are enough for me to reach the judgment that H.117, as written will not truly solve any of the real and vexing problems we continue to face today. It may well make them worse.

**First:** E9-1-1: The E9-1-1 Board did not do an engineering analysis of the FairPoint response to the Board's RFP for a new five year contract. The

merging of the E9-1-1 system with the Public Safety Agency at the same time as the vendor is under PSB investigation, the Text to 911 feature is yet unavailable and the PSAP configuration and budget options are yet unknown, is unsound policy. The proposal also puts into question the confidentiality of the E9-1-1 data base. The E9-1-1 data base should not go to any vendor, nor to an agency that is shared with the State Police. This privacy imperative of the database was a priority from the start and continues to be very important. An Independent E9-1-1 Board could better maintain local control and privacy of the database, possibly saving \$2M or more by using Vermont's GIS to display the mapping data.

**Second:** GRANTS are the main concept of the Connectivity Initiative. Grants should instead be offered as revolving loans. We should attempt to steer CAF II money into a revolving loan fund and consider bonds as well to achieve a rapid fiber build-out. By using payments of the loans to make new loans, the value of the monies available is multiplied many fold. Grants are spent once and are gone.

**Third:** ONE PLAN; The "Action Plan" should not be a separate plan but an element of a complete and current Ten Year Telecommunications Plan. This was the case with the last 2004 Plan.

**Fourth:** COMPETITION; State Agencies are "...to assist in making available Transportation ROWs, and other State Facilities and Infrastructures available for telecommunications projects..." These ROWs and other facilities and

infrastructure should be made available on a non-discriminatory basis at fair market value pricing, preferably through PSB rate making proceedings.

Otherwise a competitive market is distorted by these 'inside deals', contrary to 202c. Testimony on the 2014 Draft Plan demonstrated that the per mile cost of fiber construction could be significantly reduced if pole make-ready work were done within the times specified in the Public Service Board Rules. Unfortunately, some of the Pole Owning utilities (POUs) do not adhere to the prescribed timelines. By obtaining make-ready monies in advance, then delaying some or all make-ready work for months, even for an entire year. The provider requesting the make-ready has to pay interest on the borrowed monies, then wait for long periods without receiving revenue from subscribers. An expedited pole attachment resolution process is still necessary.

COMPETITION and OPEN ACCESS: Both are statutory goals, but neither are fleshed out in a plan as necessary to move from buzz word to a binding strategy. Until the Vermont Ten Year Telecommunication Plan addresses these two fundamental issues in a comprehensive manner, we effectively have our policy foot on the accelerator and the brake at the same time.

**Fifth:** PROCESS; The public should have opportunities to contribute to the plan throughout the process. The 2004 edition of the Ten Year Telecommunications Plan was released as a of a Public Comment Draft with hearings; then a Final Draft incorporating the public comments; and public



and legislative hearings on the Final Draft. This is how the law reads now in 202d. Comments on the Final Draft might then also be incorporated into a Final Plan, or a reason provided for why not. The 2014 Public Comment Draft had one series of hearings, revised and then was proclaimed the Final Plan.

**Sixth:** INFRASTRUCTURE; The statutes, modified since 2011, provide a method for voluntary submission of telecommunication infrastructure and service area data, with confidentiality. This erodes transparency, precludes informed citizen participation and is in conflict with 202d, wherein "...the Department may require the submission of data by each company subject to supervision by the Public Service Board." Also, under voluntary submission and confidentiality, a provider of telecommunications data might claim there are exempt from the 202d language requirement. The voluntary submission with confidentiality is unnecessary and counter productive. The Department did no discovery of infrastructure under 202d in preparing the 2014 draft. As the taxpayers and ratepayers pay for infrastructure built in public RoWs, the public should be permitted to obtain information about such infrastructure without difficulty or expense. This information should not be confidential unless the Public Service Board has so ruled, after an evidentiary hearing. If the public can look and see it on a utility pole in the public Right of Way, it can't reasonably be considered a trade secret.

**Seventh:** SPEEDS; Broadband Speeds: 4/1 and 25/3 Mbps do not begin to achieve the State's goal by 2024 of 100/100 Mbps. No Infrastructure should

be designed and installed going forward to meet these low speeds of 4/1 or 25/3. Public monies should only be expended on infrastructure that meets the 100/100 Mbps goal. This has long been one of the goals of 202c already in statute, that investments not be made where it ***"results in the widespread installation of technology that becomes outmoded within a short period after installation."*** Annual cost estimates re: 4/1, 25/3 and 100/100 Mbps are unnecessary. See the costs per mile in testimony by ECFiber in the public hearings re: the 2014 Draft Plan.

**Eighth:** GOVERNANCE; A Telecommunications and Connectivity Advisory Board is unnecessary. Is the Department to be advised by this board on how to write the Plan in the absence of a Plan? Or is the purpose to advise the Commissioner of who to make grants to in the absence of a plan, which grants are supposed to be consistent with the plan? The Board is to be composed of the Treasurer, an elected official, the appointed Secretaries of Commerce and Transportation, and five at-large members (all seven appointed by the Governor). Will changing governors change the thrust of the advice from the Board? With only two year terms, with a possibility of three consecutive terms, the appointees are limited to six years. Why not six year, staggered and unlimited terms, as with the Public Service Board. With the Department providing the Connectivity Advisory Board with administrative services, legal and technical resources, are not the two tied too closely to preserve the Board's independent judgement?

**Ninth:** CONFLICTING ROLES; The Department of Public Service is to assume possession and responsibility for all VTA assets. Doesn't this make the Department a telecommunications provider, owning telecommunications infrastructure, renting or leasing fibers or circuits to other providers, i.e. ECFiber?

Should the Department not petition the Public Service Board for a CPG? Who would then represent the public in such a proceeding? Similar questions arise for VTrans, and companies such as VELCO who own, lease and manage fiber optic networks.

**Tenth:** INDEPENDENT ADVOCACY;: The Department of Public Service Advocacy role is called into question by the Department advocating as a joint petitioner on behalf of Telecommunications Providers with whom they have signed contracts or Incentive Regulation Plans. This occurs in Contract Regulation under 30 VSA 226a and Incentive Regulation under 226b. In BOTH such cases, an Independent Public Advocate is needed. The statute now only requires this for 226a. Currently, a pending IRP with FairPoint may well have compromised the Department's ability or willingness to complete a real plan. This occurred in 1992. A detailed Plan would almost certainly conflict with the pending IRP. The same issue may compromise the pending Service Quality investigation as a Public Service Board finding on service quality is necessary prior to approving the Incentive Regulation Plan. There will be questions of whether a telecommunications service provider pursuing

Connectivity Initiative grants through the Department will ever be willing to challenge, question or critique the Department's draft Ten Year Plan.

**Eleventh:** AMOs; Access Media Organizations continue to see their revenues eroded as prior CATV subscribers utilize broadband connections instead of CATV service to receive video. This issue will not be resolved simply by the FCC's recent decision defining broadband as a Title II telecommunications service. We need to consider a more logical approach in Vermont. Make financial support for public, education and government programming (PEG) a condition of CPGs for all users of the public right of way. A share of the bandwidth of a statewide fiber backbone, commensurate with the 3-5% currently allocated for PEG, might also be used for the 'G' in PEG, saving the State millions of dollars annually.

**Twelfth:** USF; Why transfer the fiscal agent for the USF from the Board to the Department? What is the gain? What problem is being solved?

**Thirteenth:** UNIVERSAL SERVICE FUND To the four recipients of USF distribution is added "personnel and administrative costs associated with the Connectivity Initiative for FY2016." This is a slippery slope, expanding the allocating USF funds to union and exempt employees salaries and benefits beyond the four original recipients. Even worse is the proposed amendment to take an additional \$.5M from USF dollars for E911 to fill holes in the General Fund. Who else will apply for USF funds in light of this?

## CONCLUSION:

I recommend that the committee not pass this bill absent resolution of the issues I have identified above, and other related issues. I support the recommendation of others that the legislative Joint Information Technology Oversight Committee be reconvened to study and resolve what they can over the summer and make recommendations to next year's General Assembly for statutory changes.

Thank you for your time and attention.

Charles F. Larkin

CharlesFLarkin@gmail.com

*Charles F. Larkin  
182 Portal Road  
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05602*

via email

August 27, 2014

Mr. Chris Reccia  
Commissioner  
Vermont Department of Public Service  
Montpelier, Vermont

Dear Commissioner;

I am a former Department of Public Service Telecommunications Engineer, having held that position for over thirty years. I have reviewed the Department's 2014 Public Review Draft of the Ten Year Telecommunications Plan.?

I strongly suggest that the Department withdraw the 2014 Public Review Draft, and inform the Legislature of why you have seen the need to do so.

The reasons for making this suggestion are as follows;

First:

The 2014 Public Review Draft Plan is missing many statutorily required components such as: an assessment of the current state of telecommunications infrastructure; an assessment, conducted in cooperation with the department of innovation and information, of the current state telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

Second;

The current hearings are being conducted on a Public Comment Draft, not on a Final Draft, as was done in 1999 and 2004, in accordance with statute.

Third;

The Plan encourages the construction of more copper and ADSL deployment, when

neither can provide the symmetric bandwidth required to meet the 2024 goal as defined in Statue, thus; such infrastructure would soon be obsolete. This is directly contrary with the goals of 30 VSA,; 202c.

Fourth;

The required survey of Vermont residents and businesses was only made public on August 25, 2014. The draft Plan was made public on August 11, 2014. Was the survey received by the Department in time to incorporate its findings into; the Public Comments Draft Plan? If not, the absence of the survey is another deficiency in the Plan.

Fifth;

The Plan evades the statutory goal of Open Access, with specious arguments. The Plan should have analyzed both sides of its position, making and presented actions aimed at this important statutory goal.

Sixth;

The Plan promotes further building and even public funding of insufficient bandwidth. It should have set forth specific actions steps aimed at the statutory goal of 100 Mbps, symmetrical..

Seventh;

The Plan does not have any actions to encourage the use of existing facilities in the deployment of broadband infrastructure. Overbuilds of fiber are a waste of public dollars and pole attachment space in the public right of way.

The Department failed to deliver a 2007, 2010 or 2013 Telecommunications Plan. As the 2014 Public Comment Draft Plan is sadly deficient, I suggest that a letter to the Legislature, withdrawing it would not be a violation of the statutory deadline to adopt a plan by;September 1, 2014, as the so-called Plan does not begin to qualify as a plan, and its adoption and issuance by the Department would be an empty act.

I suggest that your letter might inform the Legislature of your acknowledgment of the prior missing plans, the 2014 Draft Plan's deficiencies, and your intent that the Department immediately begin work on a real and complete Plan with the added benefit of the supposedly forthcoming "Action Plan for Broadband" now due in December from the Agency of Administration, as well as the benefit of further oversight and input upon the convening of the Legislature in January.

Very truly yours,

Charles Larkin

TO: Attorney General William Sorrell

FROM: Charles F. Larkin  
and  
Stephen Whitaker  
Montpelier, Vermont

DATE: January 29, 2015

Attorney General Sorrell:

We are writing to request that an Independent Public Advocate be appointed in two Dockets currently before the Public Service Board (PSB). We are firm in our belief that the public is not being properly represented by the Department of Public Service due to conflicts.

In the Five Year Incentive Regulation Plan or IRP (Docket No. 8337), the Department of Public Service (DPS) has signed an MOU with FairPoint which is filed with the Board in support of the petition. The Department's witnesses and testimony have all been in support of the MOU and the petition. There are no other parties in this docket. As both the DPS and FairPoint are on the same side arguing for approval of the IRP, the public is not represented. Under these conditions, the DPS is representing FairPoint, and cannot represent the Public.

At the pre-hearing conference, James Volz, the Chairman of the PSB suggested that the matter should possibly be reviewed under 30 VSA 226a as contrasted with 226b as the nature of the agreement constitutes a 'contract'. Both FairPoint and the Department opposed the Chairman's assertion and filed briefs supporting their opposition.

Under 30 VSA 226a, all of the documents used to craft and support the petition would have been required to be made public and a public contract advocate hired. To our knowledge, as of today, the Board has not ruled on the issue of whether they will proceed under 226a or 226b.



Subsequent to the above referenced events, FairPoint has incurred serious degradation of service quality including a massive statewide outage on the day after Thanksgiving. These events prompted the DPS to petition the Board to open a separate investigation into service quality, which was granted. The Enhanced 911 Board moved to intervene, as did we, in that docket as we have extensive expertise and interest in the network reliability and underlying causes of the failure(s). The board granted E911 intervention and denied ours, however the E911 Board has declined to hire counsel and is instead relying on the DPS attorneys.

As the E911 board has also recently entered into a five year \$11 Million contract with FairPoint for a Next Generation E-911 system, and the Department of Public Service is already on record in support of the IRP, there are again conflicts resulting in the public lacking representation. The Department is well aware that the Board is required by statute to make a finding on service quality in the IRP docket, and in addition, make a finding as to the IRP's consistency with the Ten Year Telecommunication Plan.

The Department has for the last ten years failed to prepare three full iterations of the Ten Year Telecommunication Plan which is required to be rewritten every three years. The DPS then proceeded to adopt a plan this winter in violation of statute (30 VSA 202d) by skipping the required hearings and joint hearing with the legislative committees on a final draft. As the plan is a statutorily required supporting document in any Contract or Incentive Regulation Plan filed under 226a or 226b, this represents another conflict. It also appears that the plan is intentionally devoid of many of the required components, and that the DPS has therefor compromised the telecommunications planning process in order to not undermine support of the previously filed FairPoint IRP.

In light of the new Service Quality investigation, the Board has since suspended review of the IRP pending the outcome of the investigation into service quality and network reliability. There is also a question of whether the Board will reopen evidentiary proceedings in the IRP docket, which were prior closed.

A Public Contract Advocate is required in both of these dockets in order to assure that the public is represented with no inherent and obvious conflicts as is the present situation.

Based on the above, we believe that it is imperative that a Public Advocate be appointed in both Dockets.

On a related matter, restraint should be exercised by your office prior to initiating litigation against Intrado relating to the transition agreement to the new FairPoint NG-911 system. The E911 director has disclosed that no engineering review was conducted of the new proposed system in the RFP nor in proposal review and vendor selection. In light of the recent FairPoint network failures and pending PSB investigation, a two year roll-over of the existing E911 contract may be the safest strategy pending completion of such an engineering review. It is important that Vermont not foreclose the option of exercising that contract extension provision with Intrado by initiating litigation unnecessarily in this very technical and convoluted regulatory, political, financial and engineering puzzle.

Sincerely,

Charles F. Larkin, former DPS telecommunication engineer, retired.  
and  
Stephen Whitaker

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cc: via email:

PSB Chairman James Volz

DPS Commissioner Christopher Recchia

Richard H. Saudek – former Public Contract Advocate,

Senator Tim Ashe - Senate Finance

Representative Bill Botzow - House Commerce

Representative Kathy Keenan - House Appropriations

Representative Kitty Toll - House Appropriations

David Tucker- E911 Director

Chairman Roger Marcoux- E911 Board

*Charles F. Larkin*  
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November 5, 2014

Chairman James Volz  
Vermont Public Service Board

Dear Chariman Volz,

I believe that the Schedule for Docket No. 8337 should be expanded, and an Independent Counsel as Public Advocate be appointed for the following reasons:

1. One of the most important issues remaining in the current state of deregulation is Quality of Service. Fairpoint is failing in this regard. The Department of Public Service not only wants to remove Quality of Service as an issue from consideration in the Successor Incentive Regulation Plan, but the Department's informal discovery requests with FairPoint on this issue will not even be available until early December. This, under the current schedule, falls after the Technical Hearing, Initial Briefs, and Reply Briefs.
2. The DPS states that we are in an era where Vermont consumers appear vastly more concerned about having sufficient broadband speed than issues with retail rates. The legislature has this year moved forward, requiring symmetric, 100 Mbps broadband to all Vermont addresses by 2024. This will necessitate fiber be built to every address. No current 10 year plan is yet in place, nor even drafted, to accomplish this goal.
3. Incentive Regulation Plans are to be consistent with the Ten Year Plan and goals under both 226a and 226b.

Therefore the Board should conduct a thorough investigation into how FairPoint will bring, by 2024, symmetrical 100 Mbps service to Vermonters, and place a condition or conditions on FairPoint, the Successor IRP, to achieve this goal.

It is for the above reasons I request the expansion of the Docket No. 8337 Schedule and the appointment of an Independent Counsel, who can conduct a thorough investigation into the Successor Incentive Regulation Plan.

Thank you.

## DII & VCGI problems and proposed interim solutions

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The Vermont Department of Information and Innovation's five year "IT Strategic Plan" estimates proposed IT spending of approximately \$1B during the next five years. The so-called "Plan", at this juncture, is no more than a wishful list of projects. It does include an interesting list of IT positions/salaries by agency (50 managers @ \$100k+ annually) and a narrative full of IT industry buzzwords lacking meaningful specifics.

None of the required Cost Benefit or Life Cycle Cost analysis is provided for systems costing over \$100k. (as required by 3 V.S.A. § 2222,) All Sixty four (64) systems proposed require a Cost Benefit and Life Cycle Cost analysis to be submitted to the legislature concurrent with budgets.

Also not included are any of the independent expert reviews of systems costing over \$500k as is required by the same statute section (g). Forty-Two (42) IT initiatives proposed require such independent expert review be conducted and submitted to the legislature concurrent with budgets.

Modernization:	\$429.56 M
Sustainability	\$12.49 M
Operations	\$350-\$500M
Productivity	\$35M

Appendix A	\$12.4M
Appendix B	\$12.49 M
Appendix C	\$37.6 M
Appendix D	\$35.3M

It is understandable that the Five Year IT Plan of January 2012 may not have included these essential supporting documents. At the time the new Commissioner of the Department of Information and Innovation had only been hired since June of 2011. The 2013 edition should now be complete, in compliance with statute and demonstrate the new Commissioner's abilities and respect for those statutory obligations.

In the 1990s it was discovered that VTA2, the NYNEX proposed "incentive" contract deregulating the dominant wire-line telephone carrier, was required by statute to be evaluated by the PSB for compliance with the Vermont Ten Year Telecommunications Plan. That Plan, however had not yet been written and was long overdue. The death of Governor Snelling resulted in Louise McCarren, then DPS Commissioner, leaving government. She was later discovered to be rewriting the Ten Year Plan to make it compatible with the pending NYNEX contract proposal! The legislature promptly stepped in and wisely prohibited PSB approving of any such contracts pending completion and adoption of the 10 year telecommunications plan. The legislature then took on an active role in learning about the various telecommunications and state data networks, held public hearings and developed some understanding of the complexities of the rapidly changing telecommunications landscape.

Due to limited committee time, inadequate technical support for legislative review, the complexity of IT systems and the enormous scale of the proposed five year expenses, it may be that a Legislative oversight process is again required. One possible option is to re-convene the Legislative Joint Information Technology Oversight Committee as it was created in 1993. Act No. 207 (Adj. Sess.), § 2, eff. June 17, 1994; (JITOC)

A memo from the Finance Department dated 15 January 2013 refers to a consultant study by The Gartner Group completed for the State of Michigan. This same consultant group was invited to make a presentation to the Senate Institutions Committee during the 1990s. It may also be time for the legislature to consider retaining its own IT consultant, working under the supervision of the JFO, to independently evaluate and make recommendations for changes in the directions and missed opportunities as well as to investigate the inside story of the various agency IT failures and systems that may be presently at risk of failure. IT managers could be more candid in delivering their knowledge and their reservations about current directions at DII when it is non-attributable.

The DII FY-2014 Budget request increases DII from FY13 spending of \$14M to \$21M primarily by taking over control of the various mainframes and their staffing presently belonging to Labor and Human Services. The included proposal to establish the backup mainframe data center in rented National Life property at an annual RENTAL cost of over \$350k is highly questionable.

Becoming more dependent on several very expensive IBM mainframes, with

enormous associated annual software and support expenses, as contrasted with high-reliability smaller servers, or even cloud based leasing of server space, needs to be considered and more carefully evaluated. The IT mainframe managers may not be the most objective team to be analyzing these options. Cloud based services are mentioned often in the generic IT planning document but leasing server space from Google, Amazon or other 'cloud based' service providers is not considered cost competitive in the analysis.

With DII control of the statewide data networks, GovNet, K-12 Net, the voice telephones, the email, the various mainframes, "selling" those services to the other agencies, results in an inefficient monopoly, a sole-source non-competitive contract, with each agency or department having no choice but to purchase services from the DII shop. The DII shop also has the statutory review and approval role for each departments' IT plans and direction. This can result in IT managers being unwilling to take the risk of posing tough questions or proposing innovative alternatives (or complain about the rates charged or the quality of services) as this may have consequences on the approval of that department's future IT plans.

The DII risks becoming another "too big to fail" operation with little technical oversight or ability for the legislature to control costs without the unspoken threat of, 'unknowable' but severe impacts to existing services, all supported by the centralized IT.

The **Vermont IT Assessment** was completed by TPI consulting group in December of 2009. This 163 page report constitutes the most complete inventory to date of Vermont's IT infrastructure. While it is a daunting and technical read, it can be useful in familiarizing oversight committee members with the systems and applications currently supporting Vermont's government services.

The DII internal service fund is the mechanism by which DII can raise millions in revenue from fees to agencies and departments absent any legislative review by the Ways and Means committee.

## **Vermont Center for Geographic Information Inc.**

VCGI, having been created twenty years ago by the legislature as an independent non-profit, now seeks to move back into government, primarily for reasons explained to the board as reducing the costs of health insurance and benefits administration as well as drying up federal grant funds. State government can and should have an increasingly capable geographic or "Spatial" analysis and mapping capability. This should be grown organically within each agency and not sold as a service from a central DII shop, in competition with private sector GIS vendors, and certainly not by a takeover of VCGI.

CIO/DII Commissioner Richard Boes was appointed by the Governor to also serve as chairman of the VCGI board. That board has now voted to pursue a House Gov-Ops committee bill, moved from committee without notice to, or testimony from the broader GIS community. The bill proposes repeal of the section of statute creating the VCGI governing board and assimilating the VGIS system into DII. This is highly questionable. VCGI assimilation into DII may also have to do with the unique and desirable language defining the sale of "products and services" in the VCGI statute.

The independent non-profit status of the core VCGI team should be maintained. The purposes of the organization should remain as a standards setting, database design and quality assurance. NOT SELLING SERVICES or "products". The fact that VCGI has repeatedly operated beyond their mission by positioning themselves as the "go-to guys" for GIS consulting contracts from the federal government and for state agencies through MOUs, has not only impeded fair competition and growth of a private sector GIS industry in Vermont, but had also distracted VCGI from its main mission: to further develop the database and make it "compatible with, useful to and shared with" the various NGO, utility, private and government stakeholders. Possible budgetary savings can now be found by the organization no longer requiring a salesman as there will be no need to sell anything at all. Simply coordinate and set standards and perform quality control within the existing budget. Immediately obvious gaps in present VCGI priorities include electric and gas utility participation in pole locations and make-ready status to support broadband telecommunications infrastructure improvements.



H-516, as passed out of House Gov-Ops, moves VCGI's functions into DII and dissolves the governing board of directors. The VCGI Board membership was specifically designed to include representatives of higher education, the private sector, State and local government and the regional planning commissions.

In Summary:

The prior efforts of the legislature, specifically modifying 3 VSA § 2222 requiring life cycle and cost benefit analysis of IT systems plans greater than \$100-150k, have not worked. With the independent analyses done by the former Inter-agency Information Systems Advisory Council (IISAC), and now by the administrations own consultants, the situation may have devolved into State IT managers giving a "wink and a nod" to each others' proposals and a continuing series of over-budget and non functional and wasteful IT purchases.

Vermont's long deferred expenditures for industry standard modernizations, a new impetus to centralize management of all State IT activities and the enormous proposed five year expenditures totalling over \$1B provides the Vermont Legislature a timely opportunity to re-convene an oversight committee to examine the proposed systems and directions and to steer Vermont's IT in a direction consistent with Vermont traditions of accountability, budget discipline and essential transparency.

-end 4/11/13

## SOME RELATED ISSUES / EFFORTS

Health Care Information Technology

18 VSA Chapter 219

VITL Vermont Information Technology Leaders (contractor)

*notwithstanding language in Act 142 of 2001 (such language requires annual renewal or sunsets?)*

5 Year IT plan makes repeated references to Health Care information support for AHS.

Vermont Web Portal

Vermont Information Consortium (contractor)

Vermont Center for Geographic Information

Vermont Interactive Technologies

Vermont Telecommunications Authority  
Broadband Initiative

ECF Fiber

E-911

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CIO - Commissioner of Information and Innovation

Richard Boes June 2011- present

Ruthann Sullivan Jan-Jun 2011

David Tucker

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Department of Information and Innovation created  
Technology Advisory Board created 3 V.S.A. § 2294  
Act 31 of 2003

Prior Vermont State IT Governance Initiatives

ISAC / CIT / GovNet / K12-Net

IRMAC

Chief Information Officer

Patricia Urban

Referenced files include:

- DII 2013-2018 5 year (so-called) IT Plan
- Vermont IT Assessment 2009-2010 by TPI.
- IT Finance memo dated January 15, 2013
- JITOC bill as passed - Act 207 of 1994