

“Communications Union Districts 101”

prepared by Irv Thomae

Chsir, Central Vermont Telecommunications District (ECFiber)

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I have been a Norwich resident since 1975, and (supposedly) retired in 2006. I have been a member of the ECFiber Governing Board since it first convened in April of 2008, and have been Chair since December 2012.

Communications Union Districts (CUD's) are defined in Title 30, Chapter 82, which was created by Act 41 of 2015. The principal purpose of a CUD is to bring about construction and operation of a “communications plant” (i.e., network) serving residents, businesses, etc within its member towns.

Basic structure:

Like other types of union districts under Vermont law, a CUD is “a body corporate and politic” - or as I like to explain it, a “virtual town.” Two or more municipalities can vote to form a CUD at regular or special Town Meetings. Each member town appoints a delegate (and one or more alternates) to a Governing Board (GB), which sets policy, approves budgets, etc. In GB meetings, each member's delegation has one vote. After initial formation of the District, other towns may ask to join by vote of their Selectboards, subject to approval by the current GB.

A CUD has most of the customary rights and powers of towns, except for eminent domain and the major restriction that

“(a) Notwithstanding any grant of authority in this chapter to the contrary, a district shall not accept funds generated by a member's taxing or assessment power.

(b) Notwithstanding any grant of authority in this chapter to the contrary, a district shall not have the power to levy, assess, apportion, or collect any tax upon property within the district, nor upon any of its members, without specific authorization of the General Assembly.

(c) Notwithstanding any grant of authority in this chapter to the contrary, every issue of a district's notes and bonds shall be payable only out of any revenues or monies of the district. “ (30 VSA §3082)

Furthermore,

“To the extent a district constructs communications infrastructure with the intent of providing communications services, the district shall ensure that any and all losses from these services, or in the event these services are abandoned or curtailed, any and all costs associated with the investment in communications infrastructure, are not

borne by the taxpayers of district members.” (30VSA §3053(d)).

Benefits of a CUD

Vermont towns vary at least as greatly in disposable income as they do in population density and other demographics. Furthermore, regardless of population density, it costs about the same per mile to build or upgrade any telecomm network that depends on utility poles. For deep-rural broadband, that poses a challenge in finding enough customer revenue to defray the cost. ECFiber's experience demonstrates that as a regional body with unified financing and revenue streams, a CUD can in effect average together variations in both population density and disposable income, so that a network can be built cost-effectively even in the most rural parts of its territory. Planning, designing, and building as a single district also makes optimum use of any local private investments that may be available. All of this is what we mean by the expression “economies of scale” - together with the fact that network design, construction, and operation can all be more efficient when planned from the outset to cover a much wider territory than any single town. Revenue per mile will never be as low as in urban areas, but operating a wide territory as a single district has made it possible for ECFiber to offer 25/25 mbps and even 50/50 mbps service for less than \$100/month.

Miscellaneous advice

Some points are obvious, for example that the first routes should be built where demand is high. It is probably not wise to start with territory where reasonably good broadband is already available. Weather permitting, ECFiber has recently been able to add almost 100 new customers a month because we have chosen our build-out areas based on signups – even without requiring advance deposits.

Although the law does not require that CUD member communities be contiguous, the benefits of a regional approach to network planning will be strongest if they are.

Typically, a CUD will contract for design, construction, and operation of the network with one or more entities having the necessary expertise. In ECFiber's case, we have a “design/build/operate” contract with ValleyNet, a well-qualified Vermont non-profit. Their staff provide all needed administrative services, and the District itself has no employees. There is no requirement, of course, that the implementing entity be a non-profit. Hypothetically, for instance, a CUD and an independent telephone company might find it mutually beneficial to contract with each other.

Challenges 1: Make-ready Reform

Federal and state law entitle bonafide communications providers to apply for and rent space for their cables on existing utility poles, through a process nominally overseen by the Public Utility Commission.

As the Telecomm Plan explains, however, the current system's lack of accountability can impose extensive and costly delays on any entity attempting to deploy new broadband infrastructure. As an example of why reforms such as those outlined in the Plan are needed, ECFiber's 2017 construction in six towns required at least some make-ready work on about 23% of the 6400 poles involved. Despite the PUC rule requiring work to be done within 120 days after pre-payment, 58% of all pole licenses were at least 50 days late relative to the required 120 days, and an astonishing 14% were overdue by 240 days or more. In effect, ECFiber used some of its borrowed capital to extend an interest-free loan to the pole owners for the dubious privilege of waiting 12 to 13 months, instead of a planned 4 months, before we could string our fiber-optic cables and connect several hundred long-suffering residents, chiefly in the towns of Strafford, Thetford, and West Windsor.

The Plan's simple suggestion that the applicant be empowered to have late make-ready work completed by a third party contractor – presumably at the pole-owner's expense – would be extremely helpful, and we strongly support it.

The Department has already demonstrated its commitment to such a change by petitioning the Public Utility Commission to open a “rule-making procedure” for comprehensive review and revision of its current makeready regulations. You heard this morning from Rep. Masland about H. 93, his bill to reinforce the Department's moves in that direction. I look forward to testifying on that topic in more detail when appropriate.

As H.93 proposes, because the most egregious delays have involved poles that are jointly owned (typically by an electric utility and a telephone company), the 120-day window for make-ready completion should be applied to co-owners jointly, not sequentially. That would presumably incentivize prompt action on tasks such as pole replacement that must be completed before a co-owner can do its work.

Greater transparency in the process would also help to protect all parties' interests: for example, there would be fewer disputes if pole owners routinely documented for make-ready payors the dates on which pre-payments were received, the dates when any necessary AOT or railroad permits were applied for and received, and the schedule for any needed pole replacements.

Challenges II: Funding

Because a CUD is a municipal body, once it achieves positive cash flow and a track record of steady growth, it can credibly offer its revenue bonds through the municipal bond market. The more daunting questions for a CUD or any other community broadband project are, of course, not only how to finance initial planning, design, and construction, but also how to subsidize operations in that startup stage. That's why

ECFiber enthusiastically supports the Administrations's Broadband Expansion Loan Program. By funding up to 90% of project costs and requiring neither principal nor interest payments in the first two years, we believe such loans would make it possible for CUD's and other community broadband projects to get through the startup construction phase more smoothly than we did, and begin earning revenue from customers. For the last 10% of project cost, we suggest that policy makers consider whether additional incentives are needed to encourage local private investment in CUD's at their earliest stages of development.

Just to be very clear, ECFiber is now well past the startup phase, and would not be an applicant for any such funding. Nevertheless, we believe that the CUD structure can be very effective in widespread broadband deployment across rural Vermont, and we want to see others be as successful in that effort as we have.

A firm belief in the potential benefits of the CUD structure leads me to question recent proposals to relax the statutory ban on using general-obligation bonds to assist or support municipal broadband. I believe such a change is rife with unintended consequences.

Historically, the existence of that prohibition was one of the factors that caused the residents of roughly two dozen towns having very different demographics to band together and form ECFiber, years before the CUD statute existed. Without that limitation, I suspect that a very few towns – quite likely including my own - would long since have fully met their own residents' connectivity needs, leaving their neighbors in metaphorical darkness.

But there is a second and even stronger taxpayer equity issue. Even as I celebrate Commissioner Tierney's memorable comment that “Broadband is the connective tissue of the body politic”, I also think it must be recognized that not all residents will benefit directly from it. Personally, I oppose such a change because general-obligation debt is repaid from property taxes, which in turn are unrelated either to the individual's ability to pay or to that individual's desire to make use of a broadband connection.

Pragmatically speaking too, if a CUD could be even partially financed from local taxes, in many communities that would make it extremely difficult to win voter approval for proposals to join one. ECFiber's very strong public support derives in equal measure, I think, as much from the fact that it is paid for from user fees instead of taxes, as from our high quality of service by local people.

ECFiber has achieved stable and positive cash flow, and is now growing rapidly. The fact that this has been achieved despite getting started in the teeth of the Great Recession demonstrates that success is possible without general-obligation bonding.