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WRITTEN COMMENTS OF THE NEW ENGLAND CABLE & TELECOMMUNICATIONS ASSOCIATION, INC. ON H.513

AN ACT RELATING TO BROADBAND DEPLOYMENT THROUGHOUT VERMONT

April 18, 2019

Good afternoon Chair Cummings, Vice Chair MacDonald, and esteemed Members of the Senate Committee on Finance. My name is Tim Wilkerson, and I am Vice President and General Counsel for the New England Cable and Telecommunications Association ("NECTA").

I. Introduction

NECTA is a five-state regional trade association representing substantially all private cable telecommunications companies in Vermont, Connecticut, Massachusetts, New Hampshire, and Rhode Island. In Vermont, NECTA represents Charter Communications and Comcast. Our members serve 185 Vermont municipalities with broadband, video, voice, and home security and automation services. Over the past decade, our members have collectively invested over $200 million developing state of the art networks in Vermont.

I appreciate the opportunity to testify on H.513 and detail our members' significant concerns with this legislation.

II. The USF is a consumer tax and all USF funding should support infrastructure deployment, not staffing

The Vermont Universal Service Fund ("VUSF") is a consumer tax imposed only on the customers of communications service providers. H.513 increases this consumer tax by half of one percent and will have direct impact on Vermont households and businesses. The more voice lines a residence or business has, the greater the tax impact on a family or business owner.

A consumer tax such as the USF should have clear investment results, and that should be broadband infrastructure deployment. This tax increase should not fund personnel, as it does in Section 3 of the bill.

III. All tax dollars and focus on broadband should only support unserved residents and businesses

Before considering a significant tax increase on consumers, the Committee should ensure that no tax dollar fund unproven technologies. The High Cost program contained in Section 4 of the bill provides no transparency or accountability as to the recipient of the VUSF funds. NECTA suggest that the Committee provide enhanced transparency in the high cost fund and oversight of taxpayer dollars and then dedicate all VUSF funds for the sole purpose of deployment in unserved areas either through the amended High Cost Program or the Connectivity Initiative, where there already exists certain levels of transparency and oversight. Absent enhanced transparency and oversight in the High Cost Fund, we would recommend that all VUSF dollars go to the Connectivity Initiative.

IV. There are numerous examples of successful, competitive public private partnerships to provide high speed broadband to unserved residents and businesses

There are examples of successful public private partnerships where government and industry marshal resources to reach unserved areas.

Under Governor Shumlin, Vermont awarded Connectivity Initiative grants to reach hundreds of unserved addresses in multiple rural communities. Among the recipients of these capital construction grants, were ECFiber, FairPoint Communications, and Comcast. The VUSF was the source of these funds. These network construction grants, serving only unserved areas, became a model for success in other states. This successful template for public private partnerships provides further evidence that all VUSF funds envisioned in this legislation should be rewarded through a competitive process and provided solely for unserved locations.

The Massachusetts experience demonstrates that through a collaborative approach, proven Internet providers can deliver reliable, sustainable and affordable broadband solutions on a large scale to previously unserved areas. Of the 53 communities defined by the Massachusetts Broadband Institute ("MBI") in 2017 as either completely or partially unserved, 42 towns are working towards broadband connectivity and several towns have completed networks.

Through MBI's public private partnership, both Charter and Comcast have entered into agreements providing high-speed broadband to over twenty communities and thousands of residences and businesses. In the majority of these NECTA member MBI communities, the overall coverage level will reach or exceed 96%. Moreover, through the public, competitive process, there are over twenty communities that have selected a technology solution from a provider other than a cable company. No matter who the operator selected by the municipality, state grants reimburse a portion of the costs to construct last mile broadband solutions to homes and businesses. Then the selected broadband provider assumes all future operating costs and capital investments. By providing Internet speeds meeting or exceeding the FCC's definition of broadband to residents in these formally partially or wholly unserved communities, it allows these people to access the communications tools, educational resources, and content they need to fully participate in the 21st century economy.

Last year, New Hampshire passed legislation enabling municipalities to use municipal bonding to finance broadband deployment through public private partnerships in unserved locations. The law ensures that that funding for broadband deployment can be used in any location within a municipality are where the current FCC definition of broadband in unavailable. (25 Mbps/3 is the current FCC benchmark for broadband speeds). The law requires an open, public process by which municipalities select and partner with an Internet provider ensuring that local decision makers determine the most appropriate provider and technology solution to meet the needs of the unserved in their community.

V. Ensuring successful private public partnerships for unserved areas of Vermont

NECTA strongly urges this Committee to follow the proven examples outlined above to close the digital divide. There are common requirements in each of the success stories described above.

Specifically, NECTA suggests that the Senate Finance Committee pass a bill that outlines a public "request for proposal" process seeking a technology neutral solution which best fits the needs of the unserved community. Furthermore, the Committee should define unserved residences or businesses as any location with current broadband speeds below the FCC definition of high-speed broadband. This federal benchmark ensures that Vermonters are guaranteed cutting edge, robust broadband.

Currently, H.513 defines high speed broadband as "25 Mbps download and 3 Mbps upload, or the FCC definition of broadband, whichever is higher. This standard should be applied in all instances throughout H.513, including in the High Cost Program. NECTA suggest this To illustrate this point, please consider New Hampshire's statutory definition of broadband. That definition states, ""Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at rates of transmission defined by the Federal Communications Commission as a wireline advanced telecommunications capability as defined by section 706 of the Telecommunications Act of 1996, irrespective of the network technology used." This definition has been analyzed and approved by policymakers, legal experts, and advocates. Adopting a flexible definition guarantees that Vermont residents will enjoy high-speed broadband without requiring future legislators to amend multiple statutes to keep pace with minimum federal broadband speeds.

Finally, to ensure that the selection process is a fair and an efficient use of state dollars, the bill should include a challenge provision for any existing provider currently providing Internet service within or directly adjacent to a proposed unserved area. Such challenges are found in similar broadband deployment laws and typically state that the existing provider may submit, within 45 days of the release of the applications, a written challenge to the application disputing an applicant's certification that a proposed project area is truly unserved, or that no other federal or state programs provide funding for a proposed deployment for which program support is

sought. This process requires attesting to the challenging provider's existing, or planned, provision of broadband within the applicant's proposed project area.

VI. The pitfalls of investing government dollars in unrealistic and incomplete business models and untested companies

Given the pace of technological change and need for ongoing investments in infrastructure, governments should only investment in partnerships with proven Internet providers who have the capacity and financial resources to build, operate, and continuously upgrade broadband networks. NECTA suggests that no loans, grants or other taxpayer funded investments should be made to unproven broadband providers. The experience of numerous failed publicly subsidized broadband networks illustrates that unproven broadband companies often have unrealistic business plans and lack adequate understanding of the marketplace creating barriers to competition and leading to risky, debt laden scenarios for taxpayers.

When evaluating the merits of spending taxpayer dollars to finance ongoing broadband, many factors must be considered beyond the initial deployment. For example, significant maintenance and repairs will be required, and upgrades will be demanded by consumers. Storms will happen, and outages will need to be addressed. Consumer demand will change, and greater speeds and capacity will be demanded. These issues can only be addressed by spending more capital, investing in the network, and improving products and services. Start-ups and other inexperienced broadband industry providers, who are unable to meet predictable and unforeseeable costs, should not be the recipient of any state government loans, grants or other sources of taxpayer dollars.

The massive and ongoing investment required to maintain the competitiveness of these networks makes the prospect of government investing in speculative or startup companies highly risky. Cisco predicts in its 2019 Visual Networking Index that in the United States, Internet Protocol traffic will grow 3-fold from 2017 to 2022, a compound annual growth rate of 21%. Mobile data traffic will grow 5-fold from 2017 to 2022, a compound annual growth rate of 36%. There will be 4.6 billion networked devices by 2022, up from 2.6 billion in 2017 with 76% of consumer IP traffic originating from non-PC devices. Given the dramatic changes by which people are creating and consuming data, no state should invest in risky technology broadband solutions, particularly in state focused on closing the digital divide. All scarce state resources dedicated to broadband in Vermont should be focused on deploying infrastructure to unserved locations.

VII. There are numerous examples of failed government funded networks competing with private industry.

One of the most egregious failure of a state investment in broadband happened in Vermont. In 2005, the city of Burlington began offering municipal broadband to its residents and businesses. By 2009 Burlington Telecom was $51 million in debt and had failed to pay back an undisclosed $17 million loan from the city, violating state law. In 2014 the network was "sold" to Blue Water Holdings for $6 million in debt, with the funds used to pay back a portion of a $10.5 million

settlement between the city and Citibank. Recently, the city sold the network to Champlain Broadband—costing taxpayers over $16 million, leading to increased municipal costs from credit downgrades and litigation.

A similar scenario unfolded in Groton, Connecticut. In 2003 the city established Thames Valley Communications and authorized nearly $7 million to develop a municipal broadband network. By May of 2004 parts of the network were up and running. Between 2006 and 2008 the city borrowed $34.5 million to build-out its network—$5 to 10 million more than original estimates. After years of subsidizing losses, the city could no longer afford to support the network, and in 2013 was forced to sell the network for $550,000. Groton's electric utility ratepayers were left responsible for $27 million in debt—which they will be paying fort the next fifteen years.

In New Hampshire, the FastRoads project received millions of dollars in taxpayer grants but couldn't attract enough users to break even, leaving its parent, Monadnock Economic Development Corporation paying $15,000 a month to keep FastRoads afloat. Like so many other municipal broadband projects, they ultimately sold the network to New Hampshire Optical Systems at a substantial loss.

A careful financial review of every municipal broadband project in the country by University of Pennsylvania Law School, Professor Christopher S. Yoo and Timothy Pfenninger in *Municipal Fiber in the United States: An Empirical Assessment of Financial Performance* (2017) underscore the treacherous risk and frequent failure of such ventures[1]. The cautionary result of Groton's broadband venture was losing over $30 million in less than 10 years, proving costly to the City of Groton, its taxpayers, and bondholders.

It is far better public policy to encourage and incent competitive market participants, with access to private capital, to deploy and upgrade technology than for state governments to invest in risky companies that will most likely demand ongoing investment and subsidies to keep up with technological innovation and consumer demand.

For all the above reasons, NECTA respectfully submits its concerns with H.513.

Respectfully,

Dated: April 18, 2019

Timothy O. Wilkerson
Vice President & General Counsel

[1] Yoo, Christopher S., Municipal Fiber in the United States: An Empirical Assessment (March 31, 2017). Available at SSRN: https://ssrn.com/abstract=2944137 or http://dx.doi.org/10.2139/ssrn.2944137