

“Communications Union Districts 101”

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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 served as Chair from December 2012 until stepping down in May of 2020.

My colleagues agreed that a quick review of Communications Union Districts (CUD's) might be helpful. CUD's are defined in Title 30, Chapter 82, which was created by Act 41 of 2015 with significant help from this Committee (especially Sen. MacDonald) and Senate GovOps. Following enactment of Act 41, ECFiber reorganized as the East Central Vermont Telecommunications District and began operating as the state's first CUD on Jan 1, 2016.

Purpose and Basic Structure

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.

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. (As provided by H.958, during the COVID emergency Selectboards and/or City Councils can take that action without a Town Meeting.) 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 following restrictions on financing:

“(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. 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, enabling a network to 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 these advantages are embraced 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. Those economic benefits are matched by the value that comes from combining the diverse backgrounds and skills of energetic volunteers from across its member communities.

Revenue per mile will of course never be as high as in urban areas. Nevertheless, designing, building, and operating a wide territory as a single district has made it possible for ECFiber to offer 25/25 mbps for \$72/month, and 100/100 mbps service for \$104/month. Incidentally, our top speed is 800/800, and we now have almost 5000 customers connected in 22 towns.

Typically, a CUD will contract for design, construction, and operation of its 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 technical as well as 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.

ECFiber began construction early in 2011 with approximately \$900,000 of high-interest loans from a small number of interested persons who were willing to fund a “demonstration project” deliberately planned for broadband-starved rural towns in and near the Connecticut River / White River valleys. That money was used to build a central Network Operating Center or “hub” and a 25-mile loop of fiber-optic cable mostly in Barnard. Almost immediately, residents of neighborhoods near that first loop asked how they could be connected too, and we began offering unsecured 15-year Promissory Notes, in small multiples of \$2500. Ultimately we raised \$6M from more than 450 different individuals, but it wasn’t easy and it wasn’t quick. In the early years, it also was not conducive to well-planned network design and buildout. Eventually, however, the slow but steady growth of our network and customer base, and passage of the CUD statute, together made a better way possible.

Because a CUD is a municipal body, upon achieving positive cash flow and a track record of steady growth it can finance further construction by issuing revenue bonds through the municipal capital market. ECFiber has proven that a rural broadband network can indeed generate sufficient customer revenue for full coverage of operating expenses as well as debt service. However, our first bond issue did not occur until April of 2016, almost five years after the initial construction, and more than half of that first issue was used to refinance those earlier high-cost short-term loans. The daunting questions for a CUD or any other community broadband project are, therefore, not only how to finance initial planning, design, and construction, as well as subsidizing operations in that startup stage, but also how to get through it more quickly than we did.

For that reason, ECFiber enthusiastically supported the Broadband Expansion Loan Program established last year by Section 15 of Act 79 (H.513). Such loans, by funding up to 90% of project costs and requiring neither principal nor interest payments in the first two years, are intended to make it possible for CUD's and other community broadband projects to get through the startup phase much more smoothly than we did. Three to four years after revenue begins to flow from customers, they should be able to refinance the VEDA loan in the bond market.

The design of the Broadband Expansion Loan Program assumed that 10% of a project’s total cost could – and should – be raised from other sources, ideally local investors. ECFiber’s early history, however, shows that even in a relatively wealthy part of the state, such a process can take several years. Pandemic concerns have now highlighted urgent educational and economic needs for broadband across all of Vermont. Rural kids and communities cannot wait. We commend the Governor’s proposed \$2M appropriation for use by CUD’s to meet that 10%-match requirement, and we strongly

urge you to support it as well.

An Idea Whose Time Has Come

About three years ago, volunteers from a group of towns clustered around Montpelier began the work that led to forming CVFiber by Town Meeting votes in March of 2018. Partly in response to the resources provided by H513, Town Meeting votes earlier this year led to formation of three more. In response to the pandemic emergency, an additional five CUD's have been formed since May, while ECFiber and others have accepted some new member towns. As of late August a total of 128 towns and cities are now CUD members. (See the enclosed map, from the Dept of Public Service.)

Advantages for Community Broadband of Barriers to Municipal Funding

It may seem counter-intuitive, but it's my personal opinion that community broadband has actually benefited from Vermont's long-standing legal barriers against funding public telecomm networks either from local taxes or through General-Obligation bonds.

Years before the CUD statute came into being, the existence of that prohibition was a major factor in causing the residents of roughly two dozen towns having very different demographics to band together and form ECFiber. 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.

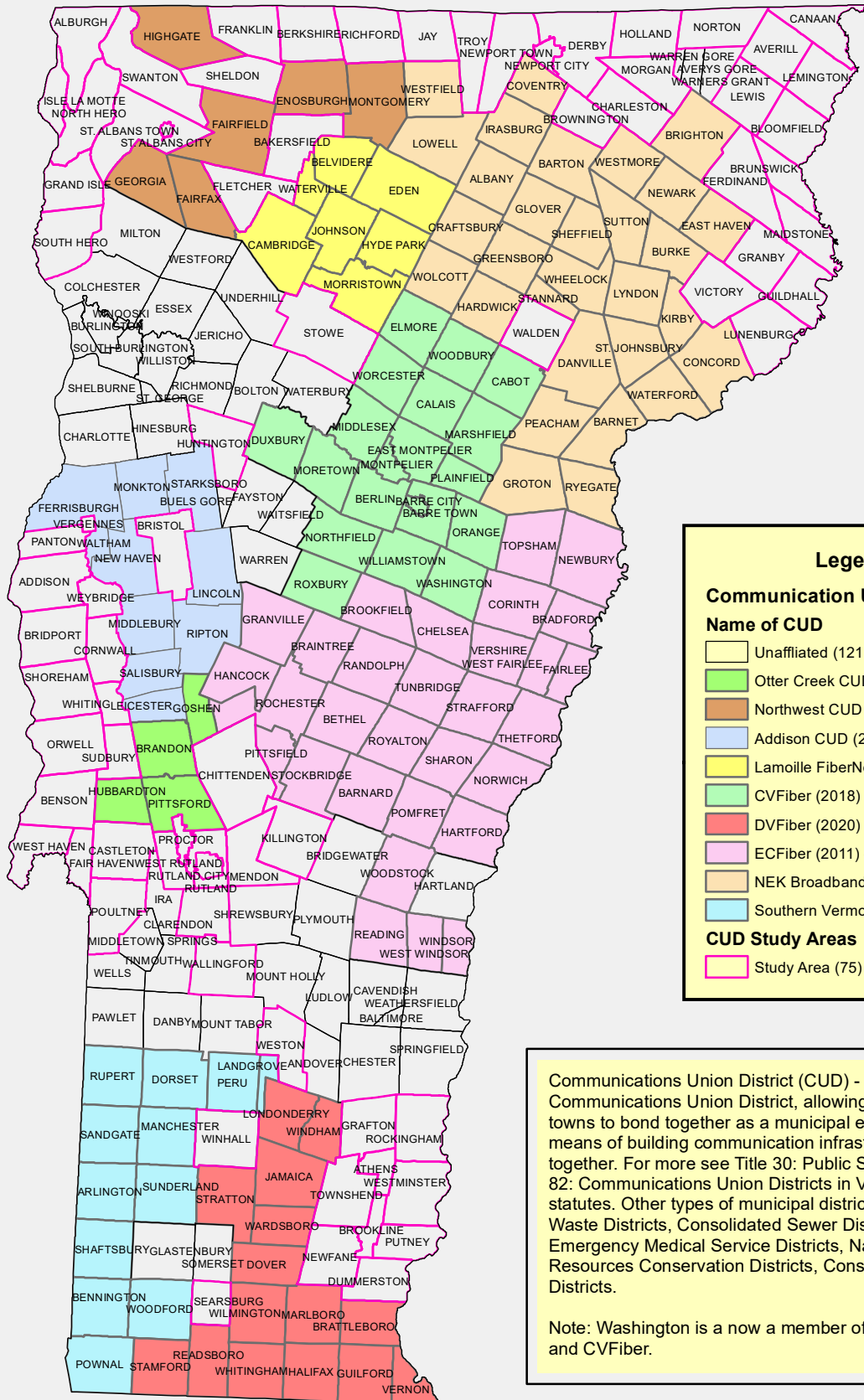
ECFiber has achieved stable and positive cash flow, and is now growing rapidly. The fact that this has been achieved despite getting started in the teeth of the Great Recession demonstrates that CUD's can indeed succeed without general-obligation bonding.

Communications Union Districts



Department of Public Service

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Legend

Communication Union District

Name of CUD

- Unaffiliated (121)
- Otter Creek CUD (2020) (4)
- Northwest CUD (2020) (6)
- Addison CUD (2020) (10)
- Lamoille FiberNet CUD (2020) (7)
- CVFiber (2018) (20)
- DVFiber (2020) (15)
- ECFiber (2011) (30)
- NEK Broadband (2020) (30)
- Southern Vermont CUD (2020) (12)

CUD Study Areas

- Study Area (75)

Communications Union District (CUD) - CUD is a Communications Union District, allowing two or more towns to bond together as a municipal entity for a means of building communication infrastructure together. For more see Title 30: Public Service, Chapter 82: Communications Union Districts in Vermont state statutes. Other types of municipal districts include Solid Waste Districts, Consolidated Sewer Districts, Emergency Medical Service Districts, Natural Resources Conservation Districts, Consolidated Water Districts.

Note: Washington is a now a member of both ECFiber and CVFiber.