

Mansfield Community Fiber Inc,
Comments on House Energy & Technology Committee Draft 1.1 of 1.26.21

- 1 The pandemic has exacerbated broadband deficiency in the state. Two years ago, the legislature passed Act 79 in the hopes of accelerating BB development. Mansfield Community Fiber took advantage of that legislation, and particularly Sec 9. 10 V.S.A. § 280ee, creating the Broadband Expansion Loan Program at VEDA. The Town of Fletcher has received a VEDA letter of intent under this program to support complete build-out of the town in association with Mansfield Fiber. As a result of our successful use of that facility, by this time next year the Towns of Fletcher will be 100% served, and Cambridge and Fairfax will be 75% served with future-proof fiber-optic connectivity capable of providing as much as 1 Gbps symmetrical service (guaranteed - not “up to”). The Towns of Waterville and Belvidere will be 60% covered and our service will have reached 25% of Fairfield and Sheldon, and will be continuing to expand in all of these rural towns.

- 2 **In spite of these achievements** in bringing real state-of-the-art fiber-optic broadband to rural towns that heretofore had no prospects of receiving such, it now appears that draft legislation is being actively considered that would forbid VEDA to make any broadband loans to anyone except CUDs. No broadband loans to a local, home-grown and funded private company like ours, no loans to individual towns, no loans to cooperatives or non-profits, municipal power companies, etc .

We find it almost inconceivable that the Vermont legislature would truly intend to carry out such an obviously unfair, discriminatory and destructive action. This is indeed unprecedented. We know of no other restriction based on form of business organization, that has been applied to VEDA’s operations. Is it even a lawful restriction on such a use of taxpayer funds?

Yet that is what the plain language of the Bill states: by making this program exclusively available to CUDs, it appears to be deliberately designed to choke off *our* progress and potentially compromise our financial viability....but also to choke off any action by such entities as small independent telephone companies (such as Franklin Telephone, Waitsfield/Champlain, Topsham telephone,etc), electric co-ops like VEC or Washington Electric, etc. , municipal electrics, or individual towns. All of these are promising candidates to bring real, effective broadband to rural Vermont.

Mansfield Community Fiber Inc. is a local company founded by 10 local residents’ using their own personal funds. That our own legislature would cut off this proven, locally-grown enterprise at the knees is truly shocking.

- 3 Let it be noted that we were among the original founders of the only successful CUD in New England—ECFiber. We supported and helped draft the legislation that created the CUD mechanism in which ECFiber was expressly named as the first CUD in the legislation itself. In short, we are, and always have been, strong supporters of the CUD concept. But we also believe it to be contrary to the principles of Vermont and of the United States to effectively curtail *any other* form of broadband provider by deliberately prohibiting the principal State financial entity charged with supporting innovative small business and startups from lending to any kind of broadband company except one “chosen” variety!!
- 4 Frankly, we cannot believe that this committee understands that this is what the legislation would do—or that it supports such a grossly discriminatory and counterproductive action. This can easily be remedied by restoring the original language regarding VEDA’s Broadband Expansion Loan Program now extant in Act 79.
- 5 We understand that the CUD member towns may be frustrated by the slow roll-out of broadband. But all must understand that this is major infrastructure and cannot be built quickly if it is to be done correctly. We understand that the Committee is concerned about the lack of progress by the CUDs. But It is not at all clear that the proposed legislation has correctly identified the reasons for this, and therefore proposed appropriate remedies likely to have the intended effect.
- 6 Please note that the principals of our company, Tim and Leslie Nulty, were responsible for the creation and development of ECFiber, the model for CUDs . At the time we were organizing and building ECFiber, we attempted to assist numerous similar undertakings in Vermont and neighboring states. None of them got anywhere. ***What was different about ECFiber, is that it had, from the beginning, an operating partner, ValleyNet, with expertise in building and running broadband networks, in financing, and in community organizing and engagement.*** The member towns of ECFiber worked very hard to raise local funds, ultimately \$7.5 million of high yield, un-secured loans, from local citizens who stood to benefit from the creation of a locally owned and managed state-of-the-art broadband system in their communities. This “quasi equity” brought the enterprise to a point where it could attract and support commercial financing. The locally raised un-secured financing constituted a de-facto “equity-like” contribution which played a major role both in financing ECF’s successful start-up itself, as well as convincing Wall Street that there was (and is) the capacity to use those funds productively and that there was and is real, concrete and substantial support from the community for ECFiber. By contrast, grants to ECFiber were trivial, if not de-minimis. Had they not been available it would have had no material effect on ECFiber’s development. ECFiber was financed and was successful using funds obtained on commercial terms. Despite all the criticism

and nay-saying we endured in ECFiber's early days, including from the VTA, ECFiber has proven its business model. Anyone who cannot build successful state-of-the-art broadband networks anywhere in Vermont without special taxpayer grants and subsidies should not be in the business. That includes CUDs, and we have met with those in in our service area to convey our readiness to cooperate with them in any mutually beneficial manner.

7 We suggest that as ECFiber did, the new CUDs should be required to raise equity independent of state grants: 1) to "back-stop" State loans; 2) to demonstrate community support for any CUD seeking state-backed loans; 3) require professional discipline over the use of scarce and valuable financial resources; and, 4) to help bring these enterprises to point where they can be self-financing in the financial market without the need for taxpayer assistance.

8 Further, and here the legislative language is very unclear, it appears that this revised Community Broadband Loan Fund is going to be allowed as much taxpayer money as necessary to absorb losses up to \$27 million via mandatory annual appropriations [Sec 280ff (2)]. The Fund is being provided a loan loss reserve of 25% of expected losses. This is extraordinary in the banking world and drastically reduces any need for discipline from borrowers to operate prudently to prevent losses. There is no reason whatsoever that telecommunications cannot be developed and operated profitably, with allowance made for the long time required between development and positive cash flow. ***In view of this, basic fiscal responsibility requires that VEDA be required to utilize its banking expertise, experience and authority to protect itself and Vermont taxpayers from loose and undisciplined projects. The relevant language in the committee bill not only does not require VEDA to act responsibly—it effectively prohibits it from doing so!!***

9 Based on our experience at ValleyNet/ECFiber and now Mansfield Community Fiber, we do not see how the draft legislation will be effective in addressing the lagging results from CUDs and we are concerned about the scale of potential risk to the taxpayers of Vermont. The current legislation is a recipe for dolling out taxpayer cash to any CUD that wants it with an open-ended check-book to cover the resulting (and highly likely) losses from taxpayer funds.

10 By creating subsidies, loan programs, open-ended "loan loss reserve" and other advantages solely for CUDs, the legislature will be erasing normal financial disciplines that can assure accountability and proper use of funds. Vermont is a small state with constrained public financing capability. As such, we believe much care must be taken not to expose taxpayers to unforeseen and uncalculated budgetary stresses.

- 11 The centerpiece of this legislation is the proposed Community Broadband Development Authority (CBTA) which mimics/recreates the structure of the old Vermont Telecom Authority. Because of its failure, the entity was terminated and dismantled. The principals of MCFiber had direct personal experience trying to work with the former VTA. We wonder what analysis has been done to determine why it failed. We do not see anything in this legislation that addresses that failure and we do see, with the CBTA, the potential for even greater failure at much higher cost.
- 12 The legislation envisions a rather long list of functions for the CBTA without any budget estimates of the cost of providing those services to CUDs. Knowing from our own experience what many of those costs really amount to, both in time and money, we suggest that a formal analysis will reveal that fulfilling those functions will have a very substantial budget impact. For example, the CBTA is charged with providing technical assistance to CUDs on a number of matters. Such technical assistance is widely available commercially, although at the moment, with large amounts of Federal rural BB \$\$ in the offing, there is now a significant labor shortage of people with relevant experience and a validated performance track record to fill such slots. It is not at all clear how many 6-figure salaries needed to attract and retain such people, is being anticipated or appropriated by this legislation. If CBTA cannot attract top people, it will not fulfill its purpose. If the CUDs have not been able to contract with such people, despite being given \$60,000 in grants just to start with, we should find out why.
- 13 The legislation further envisions the transfer of state assets to CUDs without any conditions, and without any reference to their capacity to manage such assets. We encourage the Committee to look into this further.
- 14 The legislation authorizes the CBTA to assist CUDs in obtaining pole attachment licenses without a correct statement of what that process entails. The process is governed by regulation and by tariffs filed by pole-owning utilities and the PUC, so that information is widely available.
- 15 This proposal seeks to pull certain activities out of the Department of Public Service and transfer those to the new to-be-created entity. The DPS has developed knowledge and expertise with respect to the issuance and administration of grants currently under its jurisdiction, and continued in the current draft legislation. It has worked very hard to create an independent map and data set to identify areas of unmet broadband need. We do not see any way in which these activities conflict with any regulatory responsibilities, which are largely the role of the Public Utility Commission in any event. Why would we want to undergo the disruptive process of shifting these responsibilities to an untested and not-yet-established entirely new entity?