



I am grateful for the opportunity to once again share my thoughts on broadband policy with the House Energy & Technology Committee. A lot has changed for me and my companies since I last testified a year ago—particularly in regards to the magnitude of Kingdom Fiber’s role in closing Vermont’s digital divide. But first, a little background.

I am the general manager and majority owner of Cloud Alliance—a Vermont wireless ISP of over 15 years; a co-founder of NEW Alliance—a brand new WISP; the founder and owner of Kingdom Fiber—a fiber-to-the-premises (FTTP) ISP operating for the last two years; and delegate representing Plainfield as an active leader on the board and planning committee of CVFiber—Vermont’s second CUD.

We formed Cloud Alliance out of a two, then four-town, community effort in Washington County to counter the refusal of national providers to bring their service beyond the village centers of our towns. We now serve in 18 towns.

I created Kingdom Fiber as a direct result of VTA outreach seeking Cloud Alliance’s usage of the NEK Dark Fiber Network. Our Orleans County deployment continues to grow and is ready to expand dramatically beyond the 22 towns on the NEK DFN.

With the assistance of VELCO and the Act 79 CRF, NEW Alliance formed over the last several months from a pandemic-driven, community's desire to bring broadband access to schoolchildren in central Caledonia County.

My entry into the world of community broadband came not from the business or even technical world but from 40 years of prior careers in peace activism, social-justice community organizing, the creative arts world, and labor union representation. My primary missions have always been community service, communications, and equitable economic development. Having become a businessperson (against my better judgement!), I've increasingly learned what it takes to balance social imperatives with those necessitated by economics.

I'm speaking today mostly with my Kingdom Fiber hat on, but I wanted you to know the diverse background driving many of my opinions. So, in the spirit of constructive comment, here goes:

I support the legislation you have presented. It is the product of good work done by good people seeking a noble result. I agree with much of the bill as it is written, yet one of its central premises troubles me.

Even though we can all agree that the national providers and some local providers have long let us down, forcing our rural state to always play catch-up with our more urban neighbors, I believe that Vermont is in danger of allowing the pendulum to swing much too far in the opposite

direction towards counting too much on communities to "do it for themselves."

CUDs are a very welcome addition to our broadband landscape. They are surely a positive force. The largest national providers historically, and to this day, make expansion decisions purely based on ROI and their owners' requirements. They also have much easier access to capital than do the CUDs and smaller, local providers.

Since CUDs and community-based providers seek to deliver ubiquitous coverage, the State's policies should certainly help those CUDs and community-based providers to surmount their funding obstacles. Please take heed that I am including the phrase "community-based providers" in the same sentences as CUDs!

What is a "community-based provider?" Many such providers truly were born of communities banding together to create them, just like Cloud Alliance, but for purposes of the bill, I recommend a simpler definition that includes Vermont-based independent telephone companies, cable companies, WISPs, and fiber ISPs:

"Community-based provider" means any company or organization, formed in Vermont, that provides broadband services in Vermont with less than 100 employees.

The VCBA can very well be a useful, voluntary, clearing house and much more for rural broadband development, but restricting its purpose to CUD support is short-sighted. Making CUDs the gatekeepers for all deployments is cumbersome and unnecessary. Encouraging that providers

communicate their plans to CUDs is fine, but requiring coordination is another thing. Voluntary coordination is great, yet the more layers complicating difficult business decisions, the less efficient (read more costly) these decisions become.

The following resources and opportunities exist for community-based providers now, but would be taken away with the bill as currently written:

- Technical assistance
- Broadband Innovation Grant program (feasibility studies and business plans)
- Connectivity Initiative grants (construction and service deployment)
- Fixed wireless service (not even at 100/20)
- Broadband Expansion Loan Program

None of this should happen!

The pandemic made painfully obvious that we need solutions now and in the near future. We no longer have the luxury of slow organic growth. Existing community-based providers with state and federal subsidies and now with equity investor capital are in the prime position to deliver. They can and will work with CUDs, but they also need the opportunity to perform with agility and speed. Taking away subsidies and loan opportunities handicaps the very entities with the expertise and experience needed to jumpstart this explosion of progress.

Kingdom Fiber is not looking to bypass CUDs. Rather than through compulsion, we have actively chosen to be in discussions with ECFiber, CVFiber, and NEK Broadband. We very well may enter discussions with other CUDs. Yet, the legislation appears to preclude Kingdom Fiber from getting any direct State funding without CUD approval and supervision.

Let's talk about RDOF. The FCC's recently concluded Rural Digital Opportunity Fund Phase I auction resulted in five winners in Vermont. In order of support won, they are:

- Consolidated Communications
- Kingdom Fiber
- SpaceX
- ECFiber
- Charter Cable

We are pleased to have won about \$7.5M in support to serve high-cost, unserved locations in census block groups comprising 36 towns in central Vermont and the Northeast Kingdom. This is daunting as well as thrilling, because, due to structural problems in the auction procedures and competition with Consolidated, we are taking considerable risk accepting RDOF responsibilities with support averaging just 42% of the FCC's cost model. This support does not include the cost to get to these towns. It's only to build in the areas we are mandated to serve. The total award is likely much closer to 20–25% of what we need. Therefore, we will need to find further financing from loans, grants, and sale of equity

to both interconnect these isolated groups and bring service to these locations.

In addition to two CUDs, we joined Vermont's two electric co-ops in a bidding consortium. Throughout the auction, within the consortium, we were able to discuss strategy and future arrangements with the co-ops. Washington Electric, in particular, has emerged as a great partner.

One message is simply this: we are an example of a good community-based ISP, seeking to help eliminate Vermont's digital divide. At great risk, we have taken on a difficult commitment. Whether we get CUD partnerships or not, we are obligated by the FCC to serve those census blocks that we have won. With public help, we are convinced we can accomplish our goal of dramatically solving this problem in even more than those 36 towns.

Sixteen of our RDOF-obligation towns are unrepresented by any CUDs, and the same applies to other towns we would like to serve. Does it make sense that we would be ineligible for support to build to these towns? We seek to be one of the problem solvers. Do you want to make it easier for us or more difficult? Please don't handcuff our efforts.

We are also in advanced talks with equity investors. It used to be true, as stated in the intentions section of the bill, that "traditional capital sources typically shy away from businesses with limited revenue history and little equity or collateral." The pandemic reset all that. Equity investor risk capital now seeks out broadband infrastructure investments.

These firms realize the increasingly critical need for broadband in rural markets. The affluent parts of cities and suburbs are largely built out. These investors, backed by pension funds, some with a social mission, and others simply understanding the opportunities, want to invest in capital infrastructure such as rural FTTP technology. We are fortunate to have found socially conscious, patient investors to partner with.

Additional topics in the bill worthy of further discussion:

Section 2 VERMONT COMMUNITY BROADBAND AUTHORITY

Include the definition for community-based providers and insert this phrase a dozen times as indicated in the edited draft.

Slim down the board as much as possible. No more than seven members.

Section 4 TRANSFER OF ASSETS

Federal taxpayers and State taxpayers invested considerable sums in what became three state-managed fiber networks in Putney, Orange County, and the NEK. Collectively, they were considerable treasure in the public's hands. The Putney network passed from Southern Vermont Cable to Comcast. The Orange County network is now ECFiber's, and the remaining and biggest one is the NEK Dark Fiber Network. The proposal to transfer state fiber assets is really a proposal to transfer a very valuable State asset to a single CUD.

As Kingdom Fiber was the only provider to take a large risk committing to a 20-year lease on this network, we have a vested interest in its management. We know that the network costs the State more to

manage than the revenues it generates. Banks are loathe to consider such an asset valuable collateral, but were it to become collateral, there's the possibility that it could end up like Burlington Telecom's assets did. Our good friends at NEK Broadband could end up with headache and distraction rather than the collateral they seek.

We also know that like most of Vermont but more so, the NEK does not have a sufficient market to support two ISPs on the same network. Yet, to generate revenue, the temptation would be to find another FTTP provider tenant. There simply is not enough customer density along this network or in this market to justify another player. We recommend that the State retain this network's ownership.

Section 8 CONNECTIVITY INITIATIVE

It is unwise to eliminate funding of very high-speed fixed wireless. The technology continues to improve dramatically, and the cost to deploy remains much less than fiber. Do not succumb to your antipathy for any particular company! Our WISPs are currently deploying CBRS LTE equipment and achieving remarkably fast speeds—entirely adequate for nearly all users now. As it will take a good number of years to build fiber throughout the state, and many more isolated locations may be very late or never to the fiber game, this essential tool needs to be retained and funded.

"Open Access" is a wonderful concept for urban fiber. The competition can drive consumers' costs down. It also can protect public assets from being trapped in the hands of a bad provider. Vermont

cannot generally support two providers without significant damage to the two competitors. New Hampshire tried this with the Fast Roads project. Open access failed. One provider was left standing.

If required by grant conditions, the best Vermont solution, is to use a variation of open access. Build the network with a number of fiber strands in excess of what a FTTP provider needs. Reserve the excess for other providers like mobile wireless towers, electric utility use, or longhaul, inter-city carriers. Solve the problem of the one bad FTTP provider with a contractual right to revert ownership for violation of performance guarantees.

The provision allowing the VCBA the option to advance a grantee funds is a very important one. Protect it, please.

Section 9 BROADBAND EXPANSION LOAN PROGRAM

Borrowers should be those startups that are not yet able to get large financing from bank loans or bonds. Therefore, it's important to limit this program to smaller providers and CUDS with less than \$1,000,000 in net annual revenue.

Section 14 CUD TRADE SECRETS

As municipalities in a highly competitive industry, CUDs need to protect their trade secrets and proprietary plans from competitors. These are partially vulnerable to public records information requests. Keep this provision.

Section 15 PROPERTY TAX EXEMPTION

I urge you to keep the property tax exemption in the bill for electric co-ops and to include all community-based providers in the same situation.

Section 19 COMMUNICATIONS WORKFORCE DEVELOPMENT

There is a shortage of installers and line workers now. With RDOF, a national infrastructure bill likely, and pandemic-driven, local construction, this will get orders of magnitude worse. Do not skimp on this investment. It will pay off in spades. We are looking at bringing in out-of-state construction companies. We would prefer to buy local! And, there's a shortage of fixed wireless installers, too. There should be three training programs for premises fiber installers, lineworkers/splicers, and wireless technicians.

Attached, you will find the committee's Draft 1.1 with suggested changes shown in ~~red strikethrough~~ [delete] and **blue bold** [add].

Suggestions appear on: pages 2, 4–6, 8, 11–13, 15–21, 23, and 31.

Introduced by Committee on Energy and Technology

Date:

Subject: Communications; broadband deployment; communications union districts;

Vermont Community Broadband Authority

Statement of purpose of bill as introduced: This bill proposes to coordinate, facilitate, and support accelerated community broadband deployment throughout Vermont.

An act relating to accelerated community broadband deployment

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Legislative Findings and Intent * * *

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) For over a decade, Vermont has pursued many approaches and strategies designed to ensure that every Vermonter has access to reliable, affordable, high-speed broadband.

(2) In 2018, through Acts and Resolves No. 169, the General Assembly found that broadband is essential for supporting economic and educational opportunities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement.

(3) We further found in Act No. 169 that the lack of a thriving competitive market in Vermont, particularly in isolated locations, disadvantages the ability of consumers and businesses to protect their interests sufficiently, and we recognized that the State may exercise its traditional role in protecting consumers.

(4) In 2019, through Acts and Resolves No. 79, the General Assembly found that despite the FCC’s “light-touch” regulatory approach under Title I of the Communications Act of 1934, rather than “utility-style” regulation under Title II, existing broadband providers are not providing adequate service to many rural areas where fewer potential customers reduce the profitability necessary to justify network expansion.

(5) Accordingly, reaching the last mile ~~will require~~ **can benefit from** a grassroots approach founded on input from and support of local communities. Existing broadband grant programs do not offer the scale to solve this problem, and traditional capital sources **until recently** typically ~~shy~~ **shied** away from businesses with limited revenue history and little equity or collateral.

(6) To this end, public investment in programs and personnel that provide local communities with much-needed resources and technical assistance is required.

(7) In 2020, the COVID-19 public health emergency served as an accelerant to the socioeconomic disparities between the connected and the

unconnected in our State. Vermonters who cannot access or cannot afford broadband, many of whom are geographically isolated, face challenges with respect to distance learning; remote working; accessing telehealth services; and accessing government programs and services, including our institutions of democracy, such as the court system.

(8) Indeed, the ongoing public health emergency has highlighted the extent to which robust and resilient broadband networks are critical to our economic future as a whole and provide a foundation for our educational, health care, public health and safety, and democratic institutions.

(9) Broadband infrastructure is critical infrastructure fundamental to accessing other critical services in sectors such as energy, public safety, government, healthcare, education, and commerce.

(10) The goal of universal broadband needs to be elevated as a top priority of the State to meet the economic, health, safety, and social needs of 14 Vermonters.

(11) While private broadband providers have brought broadband services to many households, businesses, and locations in Vermont, significant gaps remain.

(12) When existing broadband providers fail to achieve the goal of providing reliable, high-quality, universal broadband, it is imperative for the

State to support and facilitate the construction of broadband infrastructure through financial and other means.

(13) Communications union districts (CUDs) were created by the State to coordinate and implement creative and innovative solutions in their respective territories, particularly where existing providers are not providing adequate service that meets the needs of their residents and businesses while ensuring public accountability.

(14) CUDs are thus positioned to be the unofficial “~~provider~~ **facilitator** of last resort” for broadband and ensure public accountability for serving all Vermonters within their respective service territories. Yet CUDs **and community-based providers** have limited access to financial capital necessary for expansion of broadband to unserved and underserved areas of the State.

(15) All Vermont electric ratepayers are supporting the rollout of clean energy technologies, however not all ratepayers are able to access those technologies because they do not have access to adequate broadband. Equity in the energy sector requires universal broadband.

(16) The Department of Public Service simultaneously plays a regulatory role in the telecommunications market while also supporting the development of CUDs **and community-based providers** in an unregulated competitive broadband market.

(17) To ensure universal broadband in Vermont, there is a need for greater coordination of grassroots broadband solutions both among the CUDS

themselves and also with respect to their other potential partners, such as electric distribution utilities, nonprofit organizations, the federal government, and private broadband providers.

(b) Therefore, this act is intended to protect the public interest by:

(1) ensuring broadband availability to all Vermonters and Vermont addresses and

(2) ensuring public accountability for maintaining and upgrading critical 7 broadband infrastructure;

(3) increasing the reliability of the electric grid and ensuring equal access to clean energy services among all electric ratepayers;

(4) protecting Vermonters' privacy and unrestricted access to the Internet;

(5) alleviating the inherent tension the Department of Public Service currently experiences as a result of its dual roles as both regulator and community project developer;

(6) directing public resources to the development of public **and private** broadband assets intended to provide universal access;

(7) developing favorable taxing, financing, and regulatory mechanisms to support communications union districts **and community-based providers**; and

(8) providing time-limited leadership for coordinating the buildout of Vermont's communications union districts and their partners and for

developing financing mechanisms to fully support that buildout through a newly created State entity, the Vermont Community Broadband Authority, designed specifically to effectuate these purposes.

* * * Vermont Community Broadband Authority * * *

Sec. 2. 30 V.S.A. chapter 91A is added to read:

CHAPTER 91A: VERMONT COMMUNITY BROADBAND AUTHORITY

§ 8081. POLICY, FINDINGS, AND PURPOSE

(a) Policy. It is the policy of the State of Vermont to support and accelerate community efforts that advance the State’s goal of achieving universal access to reliable, high-quality, affordable broadband.

(b) Findings. Broadband is an essential service unavailable to many Vermonters. Federal policies that promote an unregulated, competitive broadband market have failed to deliver this essential service in many rural areas of the State. In addition, [with the hopeful exception of the FCC’s Rural Digital Opportunity Fund, a number of](#) federal programs designed to subsidize the buildout of broadband in rural areas ~~fall~~ [have fallen](#) far short of delivering broadband to the most remote regions of our State, often as a result of inadequate federal broadband mapping data or insufficient accountability. As a consequence, many locations in Vermont continue to lack access to broadband, and a comprehensive funded solution through existing federal and State broadband programs is not available to address this critical need we face in Vermont. Despite these challenges, local communities have assembled in the form of

communications union districts to address the digital divide collectively and creatively.

These local projects, and ultimately all Vermonters, will benefit from the establishment of robust statewide leadership and support for community broadband solutions.

(c) Purpose. It is the purpose of this chapter to establish the Vermont Community Broadband Authority to coordinate, facilitate, and support accelerated community broadband solutions.

§ 8082. DEFINITIONS

As used in this chapter:

(1) “Authority” means the Vermont Community Broadband Authority established by this chapter.

(2) “Board” means the Board of Directors of the Vermont Community Broadband Authority.

(3) “Connectivity Initiative” means the initiative established under section 7515b of this title.

(4) “Department” means the Department of Public Service.

(5) “Division” means the Division for Telecommunications and Connectivity within the Department of Public Service.

(6) “Fund” means the Vermont Community Broadband Fund established by this chapter.

(7) “Underserved” has the same meaning as in subsection 7515b(a) of this title.

(8) “Unserved” has the same meaning as in subsection 7515b(a) of this title.

(9) “Community-based provider” means any company or organization, formed in Vermont, that provides broadband services in Vermont with less than 100 employees.

§ 8083. ESTABLISHMENT AND ORGANIZATION

(a) The Vermont Community Broadband Authority is hereby created and established as a body corporate and politic and a public instrumentality of the State. The exercise by the Authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The Authority shall have a Board of Directors of ~~11~~ 7 members as follows:

(1) the Commissioner of Public Service or designee;

(2) the Secretary of Commerce and Community Development or designee;

(3) ~~three~~ **one** public ~~members~~ **member** representing communications union districts **not directly serving as ISPs** selected by the Vermont Communications Union District Association;

(4) ~~four~~ **two** public members appointed by the Governor, who may not be employees or officers of the State at the time of appointment;

(5) one public member appointed by the Speaker of the House, who shall not be a member of the General Assembly at the time of the appointment; and

(6) one public member appointed by the Senate Committee on Committees, who shall not be a member of the General Assembly at the time of the appointment.

(c) In making appointments of public members, the appointing authorities shall give consideration to citizens of the State with knowledge of communications technology, communications law and policy, finance, and electric utility law and policy.

(d) The public members shall serve terms of three years beginning February 1 of the year of appointment. However, two of the public members first appointed by the Governor shall serve initial terms of one year; and the public members first appointed by the Speaker and the Committee on Committees shall serve initial terms of two years. A vacancy occurring among the public members shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed.

(e) The Authority's powers are vested in the Board of Directors. Annually, the Board shall elect from among its public members a chair and vice chair. The Board may elect officers as it may determine. Meetings shall be held at the call of the Chair or at the request of three members. A majority of sitting members shall constitute a quorum and action taken by the Board under the provisions of this chapter may be authorized by a majority of the members present and voting at any regular or special meeting.

(f) Members other than ex officio members shall be entitled to per diem authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties and each member shall be reimbursed from the Fund for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

(g) The Authority shall hire and employ an Executive Director who shall serve as the Authority's chief administrative officer and shall direct and supervise the Authority's administrative affairs and technical activities in accordance with any rules and policies set forth by the Authority. In addition to any other duties, the Executive Director shall:

(1) attend all meetings of the Authority, act as its secretary, and keep minutes of its proceedings;

(2) approve all accounts of the Authority, including accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the Authority;

(3) make an annual report to the Authority documenting the actions of the Authority and such other reports as the Authority may request; and

(4) perform such other duties as may be directed by the Authority in the carrying out of the purposes and provisions of this chapter.

(h) The Authority may employ technical experts and other officers, agents, and employees as are necessary to effect the purposes of this chapter and may

fix their qualifications, duties, and compensation. [The Authority shall use the Office of the Attorney General for legal services].

§ 8084. VERMONT COMMUNITY BROADBAND FUND

There is created a special fund in the State Treasury to be known as the “Vermont Community Broadband Fund.” The Fund shall be administered by the Authority and expenditures therefrom shall only be made to implement and effectuate the policies and purposes of this chapter. The Fund shall be composed of any monies from time to time appropriated to the Fund by the General Assembly or received from any other source, private or public, approved by the Authority. Unexpended balances and any earning shall remain in the Fund for use in accord with the purposes of this chapter.

§ 8085. GENERAL POWERS AND DUTIES

The Authority shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including those general powers provided to a business corporation by Title 11A and those general powers provided to a nonprofit corporation by Title 11B and including, without limitation of the general powers under Title 11A and 11B, the power to:

- (1) coordinate and facilitate community broadband efforts and to provide resources to communications union districts **and community-based providers** in the form of technical

support as well as through grants under the Connectivity Initiative and the Community Broadband Innovation Grant Program;

(2) receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5 and for the purpose carrying out the purposes of this chapter;

(3) transfer State fiber-optic assets to the communications union district in which those assets are located;

(4) consult with the Vermont Economic Development Authority and the Vermont Municipal Bond Bank with regard to financing community broadband projects;

(5) consult with agencies and departments regarding the establishment or modification of taxes and fees applicable to broadband providers, including the establishment of criteria for the waiver of such taxes and fees when providers offer to furnish comparable value to the State to meet the public good;

(6) assist communications union districts **and community-based providers** with pursuing route identification for fiber-optic infrastructure and with obtaining pole surveys and negotiating pole attachments;

(7) identify and publish federal, nonprofit, and any other broadband funding opportunities and assist communications union districts **and community-based providers** with completing grant and loan applications;

(8) do any and all things necessary or convenient to effectuate the purposes and provisions of this chapter and to carry out its purposes and exercise the powers given and granted in this chapter; and

(9) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter;

§ 8086. COMMUNITY BROADBAND INNOVATION GRANT PROGRAM

(a) There is established the Community Broadband Innovation Grant Program to be administered by the Authority. The purpose of the Program is to fund feasibility studies related to the deployment of broadband in rural unserved and underserved areas of Vermont. The following conditions shall apply to the Program:

(1) In awarding grants under this section, the Authority shall give preference to **but not require** feasibility studies that contemplate the provision of broadband service that is symmetrical.

(2) Eligible grant applicants shall include communications union districts.

(3) Grantees shall produce an actionable business plan for a potential broadband solution, which may include formation of or partnership with an electric company, rural economic development infrastructure district, municipal communications plant, or any other broadband provider. The

business plan required by this subdivision shall include preconstruction engineering and design plans, financing models, estimated construction costs, and ideal operational models.

(4) A grant award may not exceed \$60,000.00

(5) Not more than 2.5 percent of a grant may be used for grant management.

(6) Studies funded through the Program shall conclude within 12 months of receipt of the award.

(7) The Authority shall retain 50 percent of the grant award until it determines that the study has been completed consistent with the terms of the grant.

(8) A grant recipient shall report its findings and recommendations to the Authority within 30 days following the completion of a study funded under the Program.

(b) To the extent such information is available, the Authority shall aggregate the information submitted under subdivision (a)(9) of this section and shall report its findings and recommendations in the annual report required under section 8087 of this chapter.

(c) The Community Broadband Innovation Grant Program is the successor to the Broadband Innovation Grant Program established by 2019 Acts and Resolves No. 79, Sec. 10, and any funds remaining in that program shall be

transferred to the Vermont Community Broadband Fund to support the Community Broadband Innovation Grant Program established in this chapter.

§ 8087. ANNUAL REPORT

Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Authority shall submit a report of its activities pursuant to this chapter for the preceding year to the Senate Committee on Finance, the House Committee on Energy and Technology, and the Joint Information Technology Oversight Committee. Each report shall include an operating and financial statement covering the Authority's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Authority.

§ 8088. SUNSET

The Authority shall cease to exist ~~July 1, 2026.~~ [July 1, 2031.](#)

Sec. 3. REPEALS

The following provisions of law are repealed:

(1) 2019 Acts and Resolves No. 79, Sec. 10 (Broadband Innovation Grant Program).

(2) 2020 Acts and Resolves No. 154, Sec. B1105.2 (amending the Broadband Innovation Grant Program).

Sec. 4. TRANSFER OF ASSETS **STRIKE THIS SECTION**

On or before July 1, 2021, the Department of Public Service shall transfer ownership of its fiber-optic assets to the communications union district in

which those assets are located. The transfer shall include a requirement that, upon the dissolution of a communications union district, any such fiber assets shall become the property of the State to be managed by the Vermont Community Broadband Authority or the Department of Public Service if the Authority no longer exists.

Sec. 5. 30 V.S.A. § 7516(b) is amended to read:

(b) Of the money transferred to the Connectivity Fund pursuant to subsection 7523(b) of this title, up to ~~\$120,000.00~~ \$240,000.00 shall be appropriated annually to the ~~Department of Public Service~~ Vermont Community Broadband Authority to fund the operational expenses of the Authority, including a Rural Broadband Technical Assistance Specialist whose duties shall include providing outreach, technical assistance, and other support services to communications union districts established pursuant to chapter 82 of this title and other units of government, nonprofit organizations, cooperatives, and for-profit businesses for the purpose of expanding broadband service to unserved and underserved locations. Support services also may include providing business ~~model~~ templates for various approaches plan development that reflects local preferences, including formation of or partnership with a ~~cooperative, a communications union district,~~ a rural economic development infrastructure district, an electric utility, or a new or existing ~~Internet service~~ broadband provider as operator of the network. Any

remaining funds shall be used to support the Connectivity Initiative established under section 7515b of this title.

Sec. 6. 30 V.S.A. § 202f is amended to read:

[Telecommunications and Connectivity Advisory Board continues to advise the Department of Public Service on policy and planning, ~~not~~ but not on Connectivity Initiative grants, which will now be administered by the Vermont Community Broadband Authority.]

Sec. 7. APPROPRIATION/FUNDING SOURCE

[TBD]

* * * Connectivity Initiative; Communications Union Districts * * *

Sec. 8. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The Connectivity Initiative shall be administered by the Vermont Community

Broadband Authority. The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service broadband that is capable of speeds of at least 25 Mbps download and 3 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time 100 Mbps symmetrical. Within this category of service locations, priority shall be given first to unserved and then to

underserved locations. As used in this section, “unserved” means a location ~~having access to only satellite or dial-up Internet service~~ that only has access to broadband capable of speeds of less than 4 Mbps download and 1 Mbps upload and “underserved” means a location ~~having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than~~ that only has access to broadband capable of speeds of at least 4 Mbps download and 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload. Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities. *[open access requirement TBD]*

(b) The Department of Public Service shall publish annually a list of ~~census blocks~~ E-911 locations eligible for funding based on the Department’s most recent broadband mapping data. The ~~Department~~ Vermont Community Broadband Authority annually shall solicit proposals from ~~service providers~~ communications union districts **and community-based providers** to deploy broadband to eligible ~~census blocks~~ E-911 locations. Funding shall be available for [*capital improvements only, not for operating and maintenance expenses*]. The ~~Department~~ Authority shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the ~~Department~~ Authority also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) whether the proposal would use the best available technology that is economically feasible;
- (5) the availability of service of comparable quality and speed; and
- (6) the objectives of the State's Telecommunications Plan.

(c) In order to ensure that grants are disbursed based on the value of work completed, the Authority shall develop with each grantee a payment schedule that reflects the verified percentage of project completion. To verify project completion, the grantee shall retain an Authority-approved third party to conduct independent field testing, which the Authority may supplement with provider-supplied data and crowd-sourced user data. If deemed necessary by the Authority, the Authority may advance a grantee funds necessary for project commencement. The Authority shall retain five percent of an award for two years after project completion to ensure continued compliance with contract terms. A grantee shall reimburse the Authority any funds received for contracted work that is not completed pursuant to contract specifications.

(d) The Authority shall maintain a publicly accessible inventory of completed broadband projects financed in whole or in part with grants under this section.

* * * VEDA; Broadband Expansion Loan Program; Lending Capacity * * *

Sec. 9. 10 V.S.A. § 280ee is amended to read:

§ 280ee. BROADBAND EXPANSION LOAN PROGRAM

(a) Creation. There is established within the Authority the Vermont Broadband Expansion Loan Program (~~the Program~~), the purpose of which is to enable the Authority to make loans to communications union districts **and community-based providers** that expand broadband service to unserved and underserved Vermonters.

(b) Intent. It is understood that loans under the Program may be high-risk loans to likely start-up businesses and therefore losses in the Program may be higher than the Authority's historical loss rate. Loans shall be underwritten by the Authority utilizing underwriting parameters that acknowledge the higher risk nature of these loans. The Authority shall not make a loan unless the Authority has a reasonable expectation of the long-term viability of the business.

(c)(1) Requirements. The Authority shall make loans for start-up and expansion that enable ~~the Internet service providers~~ communications union districts **and community-based providers** to expand broadband availability in unserved and underserved locations.

(2) The Authority shall establish policies and procedures for the Program necessary to ensure the expansion of broadband availability to the largest number of Vermont addresses as possible. The policies shall specify that:

(A) loans may be made in an amount of up to ~~\$4,000,000.00~~ \$8,000,000.00;

(B) eligible borrowers include communications union districts **and community-based providers with annual net annual revenue less than \$1,000,000**, and other units of government, nonprofit organizations, cooperatives, and for-profit businesses;

(C) a loan shall not exceed 90 percent of project costs;

(D) interest and principal may be deferred up to two three years;

(E) a maximum of ~~\$10,800,000.00~~ \$36,000,000.00 in Authority loans may be made under the Program commencing on June 20, 2019; and

(F) the ~~provider~~ communications union district **or community-based provider** shall offer to all customers broadband service that is capable of speeds of at least 100 Mbps symmetrical.

(3) To ensure the limited funding available through the Program supports the highest-quality broadband available to the most Vermonters and prioritizes delivering services to the unserved and underserved, the Authority shall consult with the Department of Public Service and the Vermont Community Broadband Authority.

(d) On or before January 1, 2020, and annually thereafter, the Authority shall submit a report of its activities pursuant to this section to the Senate Committee on Finance and the House Committees on Commerce and Economic Development and on Energy and Technology. Each report shall include operating and financial statements for the two most recently concluded State fiscal years. In addition, each report shall include information on the Program portfolio, including the number of projects financed; the amount, terms, and repayment status of each loan; and a description of the broadband projects financed in whole or in part by the Program.

Sec. 10. 10 V.S.A. § 280ff is amended to read:

§ 280ff. FUNDING

(a) The State Treasurer, in consultation with the Secretary of Administration, shall negotiate an agreement with the Authority incorporating the provisions of this section and consistent with the requirements of this subchapter.

(b) ~~Repayment or appropriation~~ State appropriations to the Authority ~~in years 2021 and until the Program terminates~~ is ~~are~~ based on the Authority's contributions to loan loss reserves for the Program in accordance with generally accepted accounting principles. Any difference between the actual loan losses incurred by the Authority in a fiscal year ~~2020 through Program termination~~ shall be adjusted in the following year's appropriation.

~~(1) The Program shall terminate when all borrowers enrolled in the Program have repaid in full or loans have been charged off against the reserves of the Authority.~~

~~(2) Upon termination of the Program, any remaining funds held by the Authority and not used for the Program shall be repaid to the State. This is a revolving loan program.~~

~~(3)(2) The accumulated total of the appropriation shall not exceed \$8,500,000.00 over the life of the Program \$27,000,000.00.~~

~~(4)(3) The Authority shall absorb its historical loan loss reserve rate before any State funds are expended.~~

~~(5)(4) Additionally, the Authority shall absorb up to \$3,000,000.00 \$9,000,000.00 in Program losses shared with the State on a pro rata basis.~~

Sec. 11. FISCAL YEAR 2022 ONE-TIME GENERAL FUND

APPROPRIATION

To the Vermont Economic Development Authority, \$1,260,000.00 is appropriated to serve as loan reserves to administer the Broadband Expansion Loan Program and to enable the Authority to provide credit enhancements to assist communications union districts **and community-based providers** with securing financing through other lenders.

Sec. 12. 10 V.S.A. § 219(d) is amended to read:

(d) In order to ensure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the Authority, there may be appropriated annually and paid to the Authority for deposit in each such fund, such sum as shall be certified by the Chair of the Authority, to the Governor, the President of the Senate, and the Speaker of the House, as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The Chair shall annually, on or about February 1, make, execute, and deliver to the Governor, the President of the Senate, and the Speaker of the House, a certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the Authority during the then current State fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which State funds may be appropriated pursuant to this subsection shall not exceed ~~\$181,000,000.00~~ \$193,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the Authority in contravention of the Constitution of the United States.

Sec. 13. 30 V.S.A. § 8064(a)(1) is amended to read:

(a)(1) The Authority may issue its negotiable notes and bonds in such principal amount as the Authority determines to be necessary to provide

sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the Authority, establishment of reserves to secure the notes and bonds including the reserve funds created under section 8065 of this title, and all other expenditures of the Authority incident to and necessary or convenient to carry out its corporate purposes and powers. However, the bonds or notes of the Authority outstanding at any one time shall not exceed ~~\$34,000,000.00~~ \$22,000,000.00. No bonds shall be issued under this section without the prior approval of the Governor and the State Treasurer or their respective designees. In addition, before the Authority may initially exercise its bonding authority granted by this section, it shall submit to the Emergency Board of the State a current business plan, including an explanation of the bond issue or issues initially proposed.

* * * CUD; Public Records Act; Trade Secret Exemption; Clarification * * *

Sec. 14. 30 V.S.A. § 3084 is added to read:

§ 3084. CONFIDENTIALITY; LEGISLATIVE INTENT

The purpose of this section is to clarify that any records or information produced or acquired by a district that are trade secrets or confidential business information shall be exempt from public inspection and copying pursuant to 1 V.S.A. 317(c)(9). Such records or information shall be available for public inspection after project completion.

* * * Electric Distribution Utilities; Broadband Infrastructure; CUD Lease; Property Tax
Exemption * * *

* **OPTION A:** If exempting broadband infrastructure from State property taxation
(automatic exemption from local taxation)

Sec. 15a. 32 V.S.A. § 3802 is amended to read:

§ 3802. PROPERTY TAX

The following property shall be exempt from taxation:

* * *

(19) Real and personal property, except land, owned by an electric distribution utility that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is leased to a communications union district for the purpose of providing broadband service. This exemption applies only to broadband infrastructure constructed on or after July 1, 2021.

(20) Real and personal property, except land, owned by a broadband provider that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is used for the purpose of providing universal broadband service in unserved and underserved areas, is constructed on or after July 1, 2021, and further provided this purpose is affirmed in writing by:

(A) The Department of Public Service.

(B) Any affected communications union district. As used in this subdivision, “affected communications union district” means a district in which the broadband infrastructure project is located.

Sec. 15b. 32 V.S.A. § 3800(n) is added to read:

(n) The statutory purpose of the exemptions for broadband infrastructure in subdivisions 3802(19) and (20) of this title is to lower the cost of broadband deployment in unserved and underserved areas of Vermont.

Sec. 15c. 32 V.S.A. § 3602a is amended to read:

§ 3602a. FACILITIES USED IN THE GENERATION, TRANSMISSION,
OR DISTRIBUTION OF ELECTRIC POWER

All structures, machinery, poles, wires, and fixtures of all kinds and descriptions used in the generation, transmission, or distribution of electric power that are so fitted and attached as to be part of the works or facilities used to generate, transmit, or distribute electric power shall be set in the grand list as real estate. Nothing in this section shall alter the scope of the ~~exemption in subdivision~~ exemptions in subdivisions 3803(2) and 3802(19) and (20) of this title, nor shall it alter the taxation of municipally owned improvements accorded by section 3659 of this title.

Sec. 15d. 32 V.S.A. § 3620 is amended to read:

§ 3620. ELECTRIC UTILITY POLES, LINES, AND FIXTURES

Electric utility poles, lines, and fixtures owned by nonmunicipal utilities shall be taxed at appraisal value as defined by section 3481 of this title, except as provided under subdivisions 3802(19) and (20) of this title.

***OPTION B:** If exempting broadband infrastructure from local property taxation ONLY, upon local voter approval*

Sec. 15e. 32 V.S.A. § 3851 is added to read:

§ 3851. BROADBAND INFRASTRUCTURE

(a) At an annual or special meeting warned for that purpose, a municipality may, by a majority vote of those present and voting, exempt broadband infrastructure, as defined in subsection (b) of this section, from real and personal property taxation. Such exemption shall first be applicable against the grand list of the year in which the vote is taken and shall continue until 12 voted otherwise, in the same manner, by the municipality.

(b) As used in this section, “broadband infrastructure” means:

(1) Real and personal property, except land, owned by an electric distribution utility that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is leased to a communications union district for the purpose of providing broadband service, and further provided the broadband infrastructure is constructed on or after July 1, 2021.

(2) Real and personal property, except land, owned by a broadband provider that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided:

(A) the infrastructure is used for the purpose of providing broadband service in unserved and underserved areas;

(B) the purpose required in subdivision (A) of this subdivision (b)(2) is affirmed in writing by both the Department of Public Service and any affected communications union district; and

(C) the infrastructure is constructed on or after July 1, 2021.

Sec. 15f. 32 V.S.A. § 3602a is amended to read:

§ 3602a. FACILITIES USED IN THE GENERATION, TRANSMISSION,
OR DISTRIBUTION OF ELECTRIC POWER

All structures, machinery, poles, wires, and fixtures of all kinds and descriptions used in the generation, transmission, or distribution of electric power that are so fitted and attached as to be part of the works or facilities used to generate, transmit, or distribute electric power shall be set in the grand list as real estate. Nothing in this section shall alter the scope of the ~~exemption~~ exemptions in subdivision 3803(2) and section 3851 of this title, nor shall it alter the taxation of municipally owned improvements accorded by section 3659 of this title.

Sec. 15g. 32 V.S.A. § 3620 is amended to read:

§ 3620. ELECTRIC UTILITY POLES, LINES, AND FIXTURES

Electric utility poles, lines, and fixtures owned by nonmunicipal utilities shall be taxed at appraisal value as defined by section 3481 of this title, except as provided under section 3851 of this title.

Sec. 15h. EFFECTIVE DATE FOR PROPERTY TAX EXEMPTION ONLY

These sections (pertaining to broadband property tax exemptions) shall take effect on passage and shall apply to grand lists lodged on and after July 1, 2021.

* * * Electric Distribution Utilities; Cost Recovery; Pole Survey and Make-Ready Work for Fiber Deployment; * * *

Sec. 16. [Under consideration]

* * * Electric Distribution Utilities; Middle-mile Fiber; Broadband Provider Access * * *

Sec. 17. 30 V.S.A. § 8091(f) is added to read:

(f) When presented with an interconnection request from an broadband provider for access to middle-mile fiber-optic service at a specific substation, an electric distribution utility shall inform existing broadband providers of the request and shall assess the availability of competitive fiber-optic service in the area. If alternative fiber-optic access is not available within one mile of the substation and the electric distribution utility has unused facilities serving that substation, the electric utility shall provide dark fiber from the substation to the

nearest point of interconnection with an existing broadband provider. The support shall be in the form of an indefeasible right of use (IRU) for a term of not less than ~~five~~ twenty years provided suitable performance guarantees are met. All Vermont electric distribution utilities shall adopt a uniform, nominal rate of charge for such IRUs of \$1.00 per strand mile per year. This rate can be modified after five years by the Public Utilities Commission. The service level agreement (SLA) in the IRU shall require the electric distribution utility to restore service to the provider at the same time it restores communications service to itself. In no case shall this penalize the electric distribution utility. The broadband provider shall be responsible for all maintenance costs directly associated with its fiber strands. Electric distribution utilities shall revise their rates to accept interconnection requests pursuant to this subsection on or before July 1, 2021.

* * * 248a; Telecommunications Facility Siting; Notice; CUDs * * *

Sec. 18. 30 V.S.A. § 248a(e) is amended to read:

(e) Notice. ~~No~~ Not less than 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Commission pursuant to this section to the communications union districts, legislative bodies, and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the

Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. The notices to the legislative body and planning commission of the municipality shall attach a statement that itemizes the rights and opportunities available to those bodies under subdivisions (c)(2) and (e)(2) of this section and under subsections (m), (n), and (o) of this section and informs them of the guide published under subsection (p) of this section and how to obtain a copy of that guide.

(1) Upon motion or otherwise, the Public Utility Commission shall direct that further public or personal notice be provided if the Commission finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and

information obtained at the meeting in making recommendations to the Commission on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the colocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's colocation assessment and to conduct further independent analysis, as necessary. Within 45 days of receiving the applicant's notice and colocation assessment, the Department shall report its own preliminary findings and recommendations regarding colocation to the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

* * * Workforce Development; Communications Line Workers * * *

Sec. 19. [TBD]

* * * Effective Date * * *

Sec. 20. EFFECTIVE DATE

This act shall take effect on passage.