

Testimony of Holly Groschner, Former General Counsel, Vermont Telecommunications Authority

To the Vermont Legislature - House Energy and Technology Committee - February 18, 2021

To Chair Briglin and the Committee:

I am the former general counsel of the Vermont Telecommunications Authority, where I worked under Chris Campbell and advised the Board of Directors for about four years starting in 2010. I was the person who wrote the grants and performance contracts and advised the board on legal matters. And sometimes I was the person who was asked to enforce the grant agreements. It was important to understand telecom technology, the VTA's authority, and to attempt to create standards for performance.

I have been asked to reflect on the VTA -- what worked, and did not work. I have thought about what I would want to know if I were in your shoes. I have listened to the testimony of some of the CUDs, VCUDA and former VTA executives. I have looked at the initial draft of the bill. I have four points:

1. Your expectations do not control the outcome. Slow down or they will damage the result.
2. Good news: This approach has more Simplicity and Focus than that of the VTA.
3. To succeed, the VCBA should be insulated from Politics – as possible.
4. Through legislation, remove public policy objectives from project negotiations and standardize them as requirements for receiving public funds.

Please allow me to expand on these four themes.

1. **Slow down or Pick ONE: Fast, Cheap, Good.** [The VTA was distracted from its mission by deadlines and appropriations used as cudgels]. I understand that frustrated constituents are demanding service right now. They were making the same demands ten years ago and are frustrated by government promises. The volume has only gone up with the pandemic – with government benefits and everyday services like school being driven to the internet. I understand, and as a resident of Corinth with DSL service from Topsham Telephone, I feel their pain. But government has little control over the timeline for the delivery of broadband service.

Haste has made waste in terms of broadband service for the last ten years in Vermont. Looking for timely results without a basis for performance time frames, the VTA started, stopped, tried one approach, then another. Haste – or an arbitrary delivery date—can yield incompetence and an uninformed drive for rock-bottom pricing. The VTA sometimes had to make decisions and deals to show progress.

Arbitrary timeframes are even less tenable now than they were then. At this time in the marketplace there is *extreme* demand for the resources required to build broadband systems. CUDs will not be in control of their delivery dates – and neither will the VCBA. Expenditures of substantial funds for a rational, future-proof resources take time. Securing resources takes time. Developing the process which should account for public priorities, professionalism, long-term planning and quality, and standardized investment, takes time.

I would like to point out that nowhere is it stated in the proposed bill that the VCBA is a fast-paced means to spend looming federal pandemic dollars. If you prefer a fast fix, I urge you to keep looking at short term funds for shovel-ready projects, hot spots and wireless solutions from existing utility poles and towers. Some schools are taking advantage of T-Mobile hot spot technology. Others have found other wireless solutions as a means to fill the gap for education temporarily. But don't mistake catch-as-catch can for a long-term plan. The DPS did its best to deliver wireless broadband access with federal CARES Act resources as fast as possible. Hats off to them. I understand that the initiative you intend to craft now is an extension of your legislated commitment to CUDs, in recognition that commercial service is not going to be available to some rural Vermont communities.

Failure to clarify your delivery expectations will threaten the success of the investments you seek to make. For projects of this scale and complexity, speed is unrealistic. We in Vermont have wasted years already. By time this legislation passes, July 2026 is around the corner from a project build perspective – which operates in cycles and seasons.

July 2026 is also arbitrary. Timelines and appropriations became political weapons at the VTA and drove organizational behavior. The measure of success needs to be premises served – and public policy conditions met – not time to market or financial pressures to pull rabbits out of hats. We should not succumb to the “good enough” mentality that seeks to satisfy voters with another expensive promise.

2. **Simplicity and Focus:** [The VTA was too complex, and its mandate required too much creativity – standardized deliverables would have been better.]
 - a. **Focus on standardized technology.** There's good news here: The VCBA legislation doesn't and shouldn't deal with national commercial carriers or set a goal for cell service. This approach is about local carriers and broadband only, and clearly sets a standard for a future-proofed service. If you look through the history of the legislation on broadband you will see broadband speed and capacity standards keep shifting - benchmarked to the then-current technology. I am not a technologist, but it appears that 100 Mbps is a standard that has longevity and is worthy of investment. Technology standards and public purpose obligations should be firmly planted in the legislation. Otherwise, it is too easy for negotiations to result in short term fixes sold as long-term solutions. Like VOIP over wireless sold as cell service, DSL tied to new fiber, and fiber that passes but does not deliver to the premises. Without legislated standardization, CUDs and the VCBA will be forced to negotiate standards that then create investments in a hodge podge of substandard assets.
 - b. **Streamline the role of the VCBA.** The VCBA should focus on four things: [Because everyone thinks they want the sexy, creative, risky role of developer or landlord!]
 - i. A project aggregator,

- ii. A consultant with relevant expertise (financial, technological, project management),
- iii. A public asset monitor or manager, and
- iv. A funder or funder collaborator.

I agree with Chris Campbell's testimony that the organization should have the capacity to align the interests of several operators (CUDs and others) in order to access large scale funding and grant opportunities. Collaboration is the buzz work of these times and scale drives most funding.

The VCBA should be treated as a highly qualified source of financial and technical analysis and expertise to make grant decisions and advise on project development. Everyone wants to be "in control" of their own projects, but the CUDs need reliable and industry-tested advisors. With gratitude and respect for the commitment of every CUD, there simply is not enough high-level expertise with experience to go around – and it's expensive. Because of government bid and selection processes, most of the best consultants don't want (or need) to participate.

- c. **Public Asset Manager/Monitor but not Owner.** The VCBA should also play the role of manager of grant deliverables and monitor of built assets. Somebody has to stay home and mind the store. The VCBA needs the contractual right to enforce the agreement, even if the CUD doesn't or can't afford to. If you're a CUD trying to be the developer and promoter, it makes it really hard to be the enforcer. Similarly, someone has to manage shared assets – not the State as owner or operator which is too cumbersome. The VCBA should ensure that the assets meet public policy objectives and are maintained over time. Individual CUDs are conflicted: they will either be stretched to maintain assets as they build, or could be conflicted about offering use of fiber assets to others.
 - d. **Separate Title to the Asset from Operations Management.** Thinking as a property lawyer, I would separate the use of the publicly funded broadband assets from ownership, and ask the VCBA to monitor the public use of the assets. Title could vest in the State, or in the CUD if required to attract municipal funding. While I strongly advise against title to the public assets to the CUDs without VCBA oversight, it is possible for the legal rights to include ownership if necessary for financing – but the balance of the fiber capacity could be managed by the VCBA. The bottom line is that public broadband assets are not in high demand and should not be treated as a point of control or financial "jewel in the crown" of the nascent CUDs.
3. **To succeed, insulate the VCBA from Politics:** [The VTA was subject to short term scrutiny and priorities of the Administration, the DPS and other influencers.] Perhaps this advice overlaps with all others, but it also most important.
- a. **Measure success on public purpose, not time.** Once again, performance assessments can be used as political weapons. Arbitrary deadlines – which are used as a political tool -- are irrelevant until the job is done. In my opinion, the reported measurement should

be households served per VCBA overhead expense – and the improvement in that metric will reflect the number of projects/premises served with broadband. The VCBA can be incentivized toward efficiency in this way. But legislators, even dedicated ones, can't tell the VCBA how long it will take to accomplish the service objective. Also, because funding is the legislative equivalent of deadlines, the VCBA should be a component of every appropriation for broadband construction funding -- to avoid the threat of elimination through appropriation politics.

- b. **Separate the recipients of grants from the Board.** To be effective, the VCBA Board needs the big picture of getting service to the community within the parameters of the grant funds. The VCBA Board should not include recipient CUD organizations. Should they be seated on the board, CUDs should constantly recuse themselves. As stated in the legislation, the Board should be capable of reviewing the public purpose objectives of the organization, discern the fair distribution of resources, and offer strategic vision and expertise. CUDs, by contrast, should be advocates for their communities and competing for their part of the pie with the best strategy they can muster. Not as participants in the VCBA's process. Grant funding may tie commercial ISPs to CUDs -- leading to more conflicts of interest.
 - c. **Do not make the Board a conduit for DPS oversight of the VCBA.** VCBA should not have any connection to the DPS – except for communicating strategic telecom policy, transfer of title to fiber assets created with public funds, and standards for telecom services created. VCBA should advise the DPS of findings and facts. The political issue here is about back door control of the VCBA and deregulated entities. The carrier culture of proprietary activity does not wish to partner with the regulator. Frankly, the DPS should not be forced to participate in an entrepreneurial role. At the same time, all grants and funding decisions should be public. The DPS should not have to participate on the board to know what is going on.
4. **Specify public policy objectives and use them to award public funds** [The VTA was constantly having to negotiate for benchmarks that don't translate in a commercial world: transparency, coverage objectives, cost effectiveness and sharing.] This objective is addressed in changes in the most recent draft legislation.
- a. **Through legislation, remove the public interest from carrier and CUD negotiations.** The VTA was tasked to be a developer and work with commercial carriers to achieve results that often fell below standards for commercial investment in order to meet the public good. That was a compromised negotiating position. Commercial benchmarks for performance and control are MUCH stronger than the public purpose standards set through public funding. Public expectations for control have to be modified accordingly. The focus needs to be on results. Energy consumed in negotiations with carriers – even carriers who wanted public money, and not all of them did – was wasted on negotiation of proprietary interests, business plans or other forms of control. Sometimes the VTA compromised because the it needed to demonstrate progress. That required that the VTA negotiate – and accept – standards of exclusivity, technology and terms that were not necessarily in the public interest or “mainstream.”

For example, if standards for transparency in the VCBA projects are established in the legislation, claims that build plans for projects are trade secrets or proprietary are rejected. Transparency and collaboration in public funding is appropriate where these regions of Vermont have not had competitive or commercial build plans for years. Availability of public funding does not suddenly make these projects a goldmine. Neither is public funding a competitive advantage – if it comes with obligations. That said, it is fair, as the amendments to Section 8085(b) suggest, to protect the trade secrets of commercial applicants but only so that opportunities can be explored, but subject to the publication of terms and enforcement of all grants.

This point may seem like mere nuance, my experience suggests that neither the VCBA nor the legislation should frame the CUD as the ISP's partner, notwithstanding close, symbiotic build and operate relationships such as that of ECFiber and ValleyNet. There should not be shared ownership that is required in a true partnership. Neither the CUD nor the VCBA will be successful in micro-managing private sector costs and strategies. The CUD needs to maintain its role as the community client and tap the expertise of the ISP – and monitor performance standards. The CUD ensures the public priorities for the grant project and in this capacity is the implementing partner of the VCBA.

- b. **Shared assets, publicly managed, are in the public interest.** Open architecture should be defined to allow Indefeasible Rights of Use that share common fiber assets – with the obligation for maintenance accruing to an anchor tenant – that is the benefit of “first in” commitment to the asset, not ownership of the asset as some would argue. Similarly, there should never be exclusivity rights for any carrier or grant recipient.
- c. **Management of grants should tie to public objectives.** Some portion of public funds should be held back to be released upon VCBA confirmation of connections to benchmark users - not based on “premises passed” – and should include quality control in terms of a functional test mechanism.
- d. **Public plans and public obligations.** Plans should be public and should include obligations for service to the premises, an affordability plan, and a digital economic education component. Here the independence of my testimony is compromised because I believe Equal Access to Broadband will and should afford a methodology for CUDs to subsidize service to low-income households. Accordingly, I would recommend the legislation be modified to add funding for affordability systems or awards of such funding be authorized to the VCBA. But where the bill at Section 8086(6) calls for “affordable” broadband plan options, that subjective term invites VCBA and CUD scrutiny of commercial carrier costs in a way that will not work well, could hamstring the CUD or carrier, and may take on a regulatory tone. I don't recommend that it be included unless the reference is simply to obligate grant recipients to “set a basic or entry level service in exchange for public financial support.”

Providing the unserved and underserved areas of Vermont with Broadband is a noble cause. Doing the work is tedious, difficult, time consuming, and requires extreme diligence – just like drafting this legislation. No one should conclude that public funding will be the fix. Expertise and collective action

may be a solution. Thank you for your consideration of a system to make broadband investments, and the opportunity to share my VTA experience.