

DOUGLAS R. HOFFER
STATE AUDITOR



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: June Tierney, Commissioner
Public Service Department
Re: 10-Year Telecommunications Plan
Date: 6 June 2024
Cc: Senate Committee on Finance
House Committee on Environment and Energy

In a September 2023 [memo](#) to the Department of Public Service, my office identified several shortcomings of Vermont’s current 10-Year Telecommunications Plan (adopted in 2021) and offered recommendations to improve the new Plan that is being developed. By statute, the Department is “the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the State.” Getting the Plan right matters to Vermonters.

We have reviewed the final Draft Plan to determine if the Department has incorporated our recommendations. In general, we think the Plan is an improvement on the 2021 Plan, and it addresses several of our findings. However, the final Draft Plan does not include performance measures as we recommended. We believe a new Plan should not be adopted without incorporating a series of performance measures by which the Department’s efforts to achieve the State’s telecommunications goals can be judged.

Below we discuss three reactions to the draft Final Plan. First, we discuss the lack of performance measures, which we believe is the most important shortcoming. Second, we flag a factually incorrect section relating to telecommunications fees for the use of State-owned rights-of-way. And third, we describe two concerns we raised with the previous Plan that have been addressed in the new one.

1. Draft Final Plan Doesn’t Include Performance Measures, Without Them Vermonters Will Not be in a Position to Hold the Department of Public Service Accountable for Meeting Vermont’s Telecommunications Goals.

In our September memo, we pointed out that the current 10-Year Telecommunications Plan “does not establish any meaningful performance measures with baselines, targets, and timeframes. Without meaningful measures, it is impossible to evaluate progress towards achieving the State’s

telecommunications goals or hold PSD accountable if those goals are not met.” The Department explained this omission by indicating that statute doesn’t require performance measures, and by noting that some aspects of the State’s telecommunications goals are dependent upon factors outside of the State’s direct control.

We agree that statute doesn’t explicitly require that the Plan include performance measures. However, we wish to reiterate that just because it is not required doesn’t mean the Department cannot establish performance measures. In other words, just because you don’t have to doesn’t mean you shouldn’t. In fact, the statute anticipates that the Plan would lend itself to the accountability that performance measures would establish. 30 V.S.A. § 202d(c) reads:

“In developing the Plan, the Department shall address each of the State telecommunications policies and goals of section 202c of this title and shall assess initiatives designed to advance and make measurable progress with respect to each of those policies and goals.” (underline added)

We also agree that the State’s ability to meet its telecommunications goals is partially dependent upon factors beyond its direct control (federal funding programs, private sector business decisions, etc.). We noted in a memo to the Department in October that we were not suggesting that “the recommendations and performance measures be directed to or relate to entities beyond the State’s regulatory control. The recommendations should direct State agencies to take actions in furtherance of the State’s telecom goals, and the performance measures should be designed to hold the PSD (or other State agencies) accountable for things within its control.”

Our recommendation to add performance measures was intended to make the new Plan stronger than the previous one. Unfortunately, the final Draft Plan does not include performance measures.

Instead, the Plan includes a discussion explaining why they are not included. Section 11.1.1 reads:

“If the intention is to require PSD and other stakeholders to concretely measure progress toward the goals, the legislature should consider structuring the goals in a way that is separate, specific, and measurable. Concrete objectives can be established by the agency or department responsible for the work, but given the priority placed on broadband by the legislature, and the legislature’s specificity in some parts of statute (i.e., goal 10), goals may best be established in statutory language as statute is revised.”

We are glad the Department acknowledges it is capable of establishing performance measures. We are concerned, however, that as “the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications

network serving all service areas in the State” the Department is foisting responsibility on the Legislature, which has limited time and resources and will be out of session for the next six months. While it may be preferable to have performance measures laid out in statute, they are not (and we are unaware that the Department made any attempt in the 2024 session to work with the Legislature to arrive at mutually agreeable measures). So, in the absence of statutory measures, the Department can and should establish measures prior to adopting the new Plan. Nothing stops the Department from consulting with relevant legislative leaders to inform the development of those measures, which can be added to statute at a later time.

To make the Plan stronger, to provide accountability to taxpayers, and in the interest of good government, we urge the Department to include performance measures in the new Plan, and to add them prior to presenting the draft Plan to Legislative committees.

2. Discussion of Telecommunications Fees for Right to Use State-Owned Rights-of-Way is Factually Incorrect and Needs to be Corrected.

In May 2022, my office issued a [memo](#) to the House and Senate Transportation committees concerning statutory requirements requiring the Agency of Transportation (AOT) to either charge telecommunications companies’ fees for the use of State-owned rights-of-way or follow a mandatory process if AOT felt a waiver of the fees was justified. We noted that AOT had never complied with the law – they had never charged the fee, nor had they ever issued a formal waiver.

In addition to stating that AOT should follow the law, we noted that if AOT believes some circumstances justify waiving the fee, then they could develop a policy that applied the fees in some cases and waived it in others. Through April 2024, AOT continued to not follow the law, and had not issued any waivers. On April 15, 2024, Jeremy Reed of AOT’s Highway Division sent our office a memo in response to comments we provided the Legislature more than a year earlier. In it, Mr. Reed wrote that AOT now believes the “reasonable charge” for ROW use is \$0. By way of explanation, Mr. Reed wrote that the “charging of fees to broadband providers for the use of the highway right of way may discourage the buildout of broadband to underserved areas.” No analysis accompanied this \$0 position, nor was there any explanation of how not charging a fee in areas that are not underserved was reasonable.

The Legislature has tasked AOT with studying this issue further, though the language in H.657 as it passed both chambers provides little specific direction. Without further direction from the Legislature, the report, due in October 2025, may merely reiterate AOT’s unsupported claims about the effect ROW fees will have on broadband deployment.

Regardless of the outcome of that study, the Department of Public Service should correct Section 10.3 of the May 1st draft of the 10-Year Telecommunications Plan which discusses the ROW fee issue (“Leveraging the Rights-of-Way”), making two related factually incorrect statements and an unsubstantiated claim.

First, the draft Plan wrongly states that AOT has been complying with the law by issuing waivers for the ROW fees. AOT has never issued such a waiver. The two specific passages we refer to are below:

“Stakeholders interviewed for this Plan reported that through the end of 2023, the waivers were working as intended and enabling better broadband deployment in unserved areas.” (p.188)

“PSD supports the continuation of the rent waivers until the state achieves universal 100/100 Mbps broadband because right-of-way rent increases the costs of deploying in the most difficult-to-reach areas.” (p.188)

These statements incorrectly claim that AOT has followed the law when it hasn’t. They should be deleted or amended to be true.

Second, the draft Plan makes the unsubstantiated claim that “until the state’s universal 100/100 Mbps wireline goal is achieved, rights-of-way application fees and rent impede deployments.” There has been no analysis demonstrating that assessing the ROW fees (which would be a very small percentage of deployment costs) would have any effect whatsoever on deployment. While it was unsupported, at least AOT’s April 15th letter left this question open by saying the fee “may discourage” deployment. (emphasis ours)

Finally, a note of caution to both PSD and AOT: Using AOT’s simplified and unsubstantiated logic, the Legislature should eliminate a wide range of taxes, fees, and other types of assessments on a wide range of desirable activities. If they did, it’s likely there’d be little money left with which to operate PSD and AOT.

3. Draft Final Plan Addresses Two Concerns We Had With Previous Plan.

We also wish to acknowledge that the draft Final Plan addressed two of the concerns we raised with the Department about the previous Plan. These were:

- Addressing All Ten Telecommunications Goals in 30 V.S.A. § 202c

The previous Plan did not clearly address each of the ten telecommunications goals in [30 V.S.A. § 202c](#) despite the statutory requirement to do so. We are glad to see that Section 12 of the draft Final Plan corrects this by laying out a series of recommendations addressing each of the ten goals. We do not opine on the efficacy of the recommendations.

- Surveying Vermont Residents, Businesses, Public Services Stakeholders

The Department did not satisfy the statutory requirements to survey various constituencies in order to inform the previous Plan. Specifically, the survey that was conducted did not emphasize the education, health care, public safety, and workforce training and development sectors as required. Also, the Department did not confer with all of the required stakeholders. Most notably lacking was the Commissioner of Labor. We also raised concern about the manner of conducting the survey – an online survey seemed an inappropriate method to survey residents and businesses, some of whom may not have internet access at their residences or places of business.

The surveys informing the draft Final Plan included questions regarding all of the required subject areas, and all of the required stakeholders were consulted. In addition, while targeted online surveys were utilized for the health care, business, and public safety sectors, a statistically significant phone survey was utilized for Vermont households.