



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: June E. Tierney, Commissioner, Department of Public Service
Re: 10-Year Telecommunications Plan
Date: October 16, 2023
Cc: House Committee on Environment and Energy
Senate Committee on Finance
Joint Information Technology Oversight Committee

I appreciate your prompt response to my memo about the 10-Year Telecommunications Plan. Having reviewed your response and the response from the consultants working on the 2024 Plan, I wish to provide some clarification and additional context.

First, you noted that *"the...telecom planning statute, 30 V.S.A. § 202c, does not require the use of metrics to call the Department to account for measurable outcomes based on its telecommunications planning work."* We agree that the statute doesn't *require* it. But the statute creates a floor, not a ceiling. Government accountability is not limited to instances in which statutes explicitly demand it. Nothing prevents the PSD from adopting performance measures. Indeed, I think it would be considered best practice to do so. Otherwise, the Legislature and the general public do not have a basis for evaluating your department's efforts to meet the State's telecom goals.

Second, the response from both you and the consultant assert that the 2021 Plan must not be deficient in any way because no legislator criticized the Plan when it was presented to legislative committees. This conflates a process step with a truly comprehensive legislative evaluation. Appearing before a legislative committee is indeed a form of oversight, but the Legislature is at times unaware that an executive branch agency has not followed the letter or spirit of the law. My office regularly produces reports documenting this fact. This risk is especially high when the Legislature is presented with a brief oral summary of a hundreds-of-pages-long report in the context of their wide-ranging and demanding legislative duties. More importantly, acceptance by a legislative committee does not mean the 2021 Plan cannot be improved. My memo was intended to highlight areas for improvement that I believe the PSD should consider when developing the 2024 Plan.

One such area was establishing **clear recommendations** and **meaningful performance measures** to ensure measurable progress towards the State's telecommunications policies and goals. In response, you wrote that "neither the Legislature nor the Department has the requisite legal authority to compel achievement of the State's desired goals and policy objectives." However, statute states that the plan is supposed to serve as the basis for the State's telecommunications policy and assess initiatives designed to make measurable progress with respect to each of the State's telecommunications goals. Simply put, a plan is used to achieve something. If, as you assert, neither PSD nor the Legislature has the legal authority to compel achievement of the State's goals, what then would be the purpose of the State having a telecommunications plan? Moreover, not having explicit regulatory authority does not preclude using the leverage provided by the State's massive financial support.

Moreover, we did not suggest 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.

Consider the State's goal of affordable telecommunications services as an example (see the recent media coverage, "[Some Vermonters Find the Cost of Newly Expanded Broadband is Too High](#)"). While the PSD cannot regulate telecom prices, this does not prevent you from recommending programs or policies to help achieve the State's goal of affordable telecom services. State government's approach to housing affordability serves as a useful illustration; Vermont has established numerous programs related to affordable housing even though the State cannot regulate housing costs.

Third, as I wrote in my memo, the State's goal of supporting affordable services for transmitting voice and high-speed data is not covered by any of the six telecommunications goals in the current plan. The consultant's response identifies several ways they say the 2021 Plan specifically addresses this goal. But it does not even establish what the State should consider as "affordable" telecommunications services, which could serve as the basis for the State's telecommunications policy. While the 2021 Plan does discuss affordability, I pointed out that it is not included among the Plan's stated goals. The implication being that it is not a priority of the plan and not the responsibility of the State. This is reflected in the 2021 Plan's recommendations related to affordability, such as the recommendation below from page 8 of the Plan:

"Encourage CUDs to address demand-side broadband challenges like affordability, equity, and inclusion that must be met to achieve 30 V.S.A. § 202c, and incorporate that work into planning for the short and long term."

This recommendation merely encourages CUDs to address affordability rather than requiring them to address it (the appropriation of State and Federal funds provides this opportunity). It also delegates responsibility to the CUDs, which are small, inexperienced, have very limited legal and financial resources, and are constrained by the needs / demands of their private sector partners.

Fourth, there also appears to be some confusion about how I characterized recommendations in the 2021 Plan. I readily acknowledge that the 2021 Plan includes recommendations. The point of my memo was to highlight that it was not always clear what those recommendations were. If the recommendations are not clear, it will be difficult for Legislators and the general public to know whether necessary actions are being taken to fulfil the State's telecom goals. As an example, consider Section 11 of the 2021 Plan. This section is titled "Recommendations to Improve and Expand Mobile Service," and it includes five subsections. While this could imply that each subsection is a recommendation, the structure and language of this section does not support that implication. Only one of the five subsections is included in the 2021 Plan's "Summary of Recommendations." And only three of the five subsections include an explicit recommendation, with the other two referencing things the State "could" or "may" do. As a result, it is unclear what exactly the 2021 Plan is recommending the State should do to improve and expand mobile services. If it's unclear what exactly the 2021 Plan is recommending, it is impossible to later determine the status of the plan's recommendations.

Finally, to clarify another misunderstanding, your response pointing out the distinctions between the energy and telecom sectors missed my point. I used the Comprehensive Energy Plan, with its clear set of performance measures, merely as a comparison to highlight *the lack of performance measures* in the 2021 Telecom Plan. While I agree that the sectors are different, I did not describe specific measures or even indicate that measures should relate to telecom providers. As noted earlier, the PSD could and

should develop measures that are focused on actions the PSD and other State entities can take to achieve the State's telecom goals.

My earlier memo was intended to identify opportunities to improve upon the 2021 Telecom Plan. Adding appropriate performance measures and clear action-oriented recommendations and utilizing goals that more faithfully adhere to the statutory telecom goals, would seem to be noncontroversial suggestions and I hope the PSD acts upon them to make the 2024 Plan more useful.