



TO: Colchester Selectboard  
FROM: Aaron Frank, Town Manager and Meredith Dolan, Manager's Office Staff  
DATE: June 23, 2022  
RE: Broadband Update

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**Issue:** What approach will best position Colchester to avail itself of the federal funding for broadband expansion being distributed throughout the State for the benefit of Colchester residents, businesses, and organizations?

**Background:** In June 2021, Governor Scott signed Act 71, a bill creating a framework for distributing millions in federal funds throughout the State for broadband expansion. Since then, Town staff have carefully evaluated what opportunities exist for Colchester to leverage these substantial financial resources. Prior memos released in September 2021, January 2022, and April 2022 summarized the challenges with Act 71 as well as related issues concerning Communication Union Districts.

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In these documents, Colchester highlighted challenges with the legislation and suggested potential solutions, including changes to the funding allocation formula, altering the Universal Service Plan requirement, and broadening the definition of an eligible applicant for grants through the Vermont Community Broadband Board (VCBB). Additionally, in May 2021, the Town proposed a specific legislative change to Act 71 to allow Colchester to use its allocation of federal funds to institute a new cable line extension program in order to expedite bringing improved internet service to Colchester residents. However, that proposed legislative change faced a lack of support from the VCBB and did not advance prior to the conclusion of the 2021-2022 legislative session.

Despite our best efforts, it does not appear there is broad support within the Legislature or at the VCBB to make any significant changes to Act 71 that would improve Colchester's ability to access broadband funding. While no legislation changes seem likely at this point, Colchester's efforts over the past 10 months, have successfully raised awareness at the State level of the challenges Chittenden County communities are having with accessing resources for broadband expansion. In response to our efforts, as well as the efforts of the Chittenden County Regional Planning Commission (CCRPC), the House Committee on Energy and Technology has held hearings on the subject and the VCBB released an RFP to conduct a study on broadband options for Chittenden County.

**Recent Discussions:** Most recently, CCRPC has organized several meetings amongst Chittenden County communities to discuss options and a representative from the VCBB has joined those conversations. Given that no legislative changes are forthcoming or likely, the focus of these recent conversations has been how Chittenden County communities can move forward within the existing Act 71 framework. Up until now, there was hope that Chittenden County could avoid the creation of a CUD, as it represents another unit of government requiring ongoing representation, management, and oversight.

However, it appears other possible solutions will not gain the needed traction to move forward. Membership in a CUD appears to be the only remaining option for several Chittenden County Towns to access the broadband funding being distributed through VCBB grants. With the VCBB regularly approving significant allocations of federal funding for broadband to other parts of the State, there is a need to take some action relatively soon to preserve funding for broadband improvement in Chittenden County. While no specific timelines have been offered, generally speaking, VCBB would like to see some progress towards a Chittenden County CUD by November in order preserve funding for Chittenden County. Therefore, several Chittenden County communities are actively considering the creation of a Chittenden County CUD.

**Potential Chittenden County CUD:** Act 71 and the current VCBB funding programs are strongly rooted in the CUD model. Communities that have elected to join a CUD have enhanced access for VCBB grant funding and assistance. Moreover, Act 71 specifies that large ISPs like Consolidated Communications are only eligible to receive grant funds if they are working with a CUD and are precluded from partnering directly with municipalities. With Consolidated Communication's extensive coverage in Colchester and its plans to bring fiber to portions of the Town in the next several years, they may be a logical entity to work with in Colchester, and in other Chittenden County communities. Beyond ISPs already operating in Colchester and Chittenden County, VCBB staff have indicated they have heard from several other service providers that they would prefer to work with an aggregated group of municipalities rather than a single town, which suggests a Chittenden County CUD could potentially attract additional providers to the region.

CCRPC recently provided the following overview of the purpose of a CUD and the process to create one:

*“The purpose of a CUD is to aggregate demand and create a single point of contact to negotiate with providers. By working together, the towns are more likely to attract a provider and leverage financial resources. No provider is interested in working with a single town, but many are looking for groups of towns to achieve the scale necessary to justify a project.”*

*“A Communications Union District (CUD) is formed by two or more municipalities for the purpose of building communications infrastructure under the authority of 30 V.S.A. § 3051. According to the legislation creating Communications Union Districts, to create a new CUD, two or more towns or cities must approve its formation through a town-wide vote, not a selectboard vote, and appoint delegates. See 30 V.S.A. Chapter 82 generally regarding the laws regarding CUDs, and specifically 30 V.S.A. 3051 regarding formation of a CUD. After the initial formation of the CUD other municipalities can become members with a vote of the Selectboard.”*

The VCBB has suggested that now is the time for a Chittenden County CUD and as a result, Chittenden County communities are being asked to consider voting to create a CUD. As noted above, the initial creation of a CUD must occur through a town-wide vote by at least two municipalities. With the upcoming November elections, some towns appear to be considering adding the CUD question to the November ballot in order to avoid having to schedule a special town-wide vote. The deadline to notify the Secretary of State of a town's desire to add a question on the November ballot is August 9, 2022. After the initial creation of the CUD by at least two municipalities, other towns are able to vote to join by either a public vote or a vote of the town's legislative body.

**CUD Debt & Liability:** Over the last year, Town staff have had multiple discussions with the Town's attorney and VCBB staff regarding CUD debt and liability. Initially, Town staff was concerned about the potential for the Town to be held responsible for the debt incurred by the CUD and there were questions about the ability for a Town to leave a CUD, especially after debt is incurred. VCBB has repeatedly assured Town staff and attorney Claudine Safar that there are no strings to attach a CUD's debt to a municipality, its taxpayers, or even CUD customers within the Town. Rather, VCBB has stated the CUD holds all the risk and liability for debt. VCBB has also indicated that a municipality does have the ability to leave a CUD, even after debt is incurred.

Town staff and attorneys know from other regional government agreements that leaving a regional government after they incur debt is possible but necessarily detailed and complicated and usually requires payoff of the Town's portions of the debt. Other regional operating entity charters address debt and departure from their organizations, but since CUD's are created not by specific unique charters drafted by their members, but by using state statutes, they do not benefit from these certainties.

We recognize CUD's may be somewhat different, however. Despite the assurances of the VCBB staff, because of the lack of specificity in statute related to these issues and the relative newness of the CUD model, the Town's attorney still suggests caution. Specifically, she has recommended that a written agreement between Colchester and the CUD in which it seeks membership should be created that outlines how debt will be treated and what the process would be for Colchester to withdraw from the CUD after debt is incurred. The attorney strongly suggested this agreement should be ironed out prior to a vote to join a CUD.

**CUD Funding:** As noted in our April 8, 2022 memo, the most we might hope for in VCBB funding for construction projects is \$460,000. VCBB's statewide model expects such grants to cover 60% of project costs. Applying those percentages to Colchester would suggest the Town needs an allocation of \$4.2-7.8 million in order to be comparable to other broadband projects around the state being constructed by eligible service providers. Rather, the current available allocation of only represents 3.5-6.5% of the estimated project cost, which is far less than what many other communities throughout Vermont have to access to. This funding deficiency is likely the reason that the Northwest CUD has indicated that Colchester is not a good financial fit for their model: on a percentage basis, Colchester brings more costs and less federal funding than other towns.

The CUD funding is supposed to be sufficient to either: a) issue a revenue bond which when combined with the funding from the state and user fees over the next couple decades to pay back the costs of installing and operating the fiber network; or b) attract a private partner to expand a fiber network.

**Summary & Conclusions:** Town staff have sought and proposed multiple solutions to the address the limitations of Act 71 and to increase the flexibility in the bill to allow Colchester to access broadband funds without needing to join and/or create a CUD. However, at this time, there does not appear to be sufficient support at the legislative level or at the VCBB to make changes to Act 71. *Therefore, it is staff's position that membership in a CUD is the only viable option at this time for Colchester to access federal funding for broadband expansion.*

However, we continue to have significant concerns that the funding available according to the VCBB model is insufficient. The funding might just connect one Colchester neighborhood of 10-20 addresses in a few years' time as creating a new regional board and government entity to address isolated small local problems does not seem like a time-efficient approach. If the funding is used by a regional entity to create a partnership to expand broadband through an ISP's existing expansion plans, the available funding might go further and connect more addresses, but that has the potential to take even longer.

It is also not typical to join a regional government without a plan. But the VCBB will not allow access to planning funds under their jurisdiction without joining a CUD. So we are left with a challenge; we need to join a CUD to access funding but cannot really make any assurances to the Selectboard or the voters about outcomes if they vote to join a CUD. This, along with our decreased concerns about financial liability makes us more inclined to recommend joining a CUD through a vote of the Selectboard verses a vote of the voters. If a CUD was first created by two other Chittenden County communities, it would be easier to navigate creation debt and exit agreement as suggested by the attorney Safar.

*Finally, we want to be clear that our view has changed. We see no other option to access the approximately \$460,000 in state provided federal funds without joining a CUD. But we caution about joining when we don't have any outcomes to promise the voters by doing so.*

**Questions Before the Selectboard:** Several other Chittenden County towns considering the creation of and membership in a CUD are currently discussing it with their Selectboards and it is anticipated that some will make a decision by late July and early August in order to meet the deadline for the November ballot.

- 1) Is the Selectboard interested in considering membership in a Chittenden County CUD?
- 2) What questions or concerns does the Selectboard have and what additional information about CUD membership is needed?
- 3) How might the Selectboard be interested in joining a CUD?

If the Colchester Selectboard is interested in considering membership in a Chittenden County CUD through a vote of the voters on the November ballot, staff suggests another discussion at the July 26, 2022 Selectboard meeting.