

VIT - MONTPELIER

[Hearing was held February 21, 2014 across most VIT sites. A total of three people attended to provide comments: Charles Larkin, myself, and one other]

MR. WHITAKER: My name is Stephen Whitaker from Montpelier. Charlie and I have known each other for 20 years or so. And I didn't work in the Department of Public Service. I work on the Department of Public Service.

I tried to resist and Charlie tried to dissuade me from raising the comments that this was the first available night since 2007, which is when the last subsequent ten-year plan from the 2004 plan was due to be drafted, reviewed, hearings, surveys, et cetera.

We've -- I'm suggesting that we need to do an honest assessment or that the Department should do and/or the legislature --should do an honest assessment of the missed opportunities that occurred in the gap of the three missing Telecom Plans. And just to clarify my math, '04 was the last complete plan. The '11 addendum is nothing -- nothing close, to what statute requires of a plan.

So, an '07 and '10 and '13 plan are missing. Meanwhile, tens of millions in grants and tens of millions of overbuilt fiber in the cherry picking corridors have been built. And as I understand it, open access requirements were not part of the Sovernet and the VTel grants. They are part of the Vermont Fiber Connect, the VEC fiber and VTA spans.

But the definition of what open access means is really missing. Now, we see an industry trying to co-opt, to confuse people between, you know, net neutrality and open access to carriage. And it occurs to me that the plan needs to flesh out the detail of what open access means in -- and in time, to participate in the Charter and the Comcast CPG renewals. Because if -- if Burlington Telecom or whoever their new partner is or VTel wants to reach across fiber that Comcast has pulled, there should be provision for that.

We need to unbundle the fiber. Statewide, we need to quit overbuilding it on existing corridors. There's so much dark fiber in Vermont and if you look at the statutory goals, 202c, referring to, you know, forward looking ability to grow, wireless -- we're going to wireless as the temporary band-aid for most of the applications that we see coming down the line.

It's -- we need fiber, we need symmetric connections, meaning the same speed up and down and we need it out to the corners of the state. We need wall to wall fiber. And the only way we're ever going to accomplish that economically is by incenting the carriers to use the existing fiber that's already built, quit overbuilding and then create incentives to build out to -- or requirements, conditions on the CPG to build out to these dairy farms.

MR. LARKIN: We used to have that, the conditions for the certificate of public good. And we specified exactly where

they had to build to. Then, how they would expand on that, based upon the financial facts of their returns to the Public Service Board annual reports.

MR. WHITAKER: I'd like to raise another issue in that -- I'll do this as delicate as - possible. And I appreciate Commissioner Recchia attending. I made a point of encouraging him to do so.

The fact that I have pursued the maps, in order to be prepared for this hearing, which I knew would come, I didn't know when but I knew it would come, I requested maps of the Department of Public Service. And I got the answer that, as for as I know, we don't have any of those maps.

That turns out to be quite far from the truth. What I've learned since then is that many of these maps and even the location of the providers of the so-called broadband are all protected under nondisclosure agreements.

How can we effectively run a democracy of citizen participation in a planning process where the Department has signed away our rights to see where our fiber is? I mean, there's a basic inherent contradiction there.

So, two things I'm suggesting right off the bat is that we find a way to solve that problem of making known where our fiber is. I mean, I can run around and photograph it all and build my own data base, but that shouldn't be necessary. If the Department is to be doing an advocacy role in soliciting

meaningful feedback from the community about what needs to be built where and how many partners can come to the table to see that it gets built, you can't do that without knowing where the fiber is. It's as simple as that.

Another dataset that needs to be built, the Department should do, is all of the schools and libraries and even hospitals, hospitals where they -- the finances are public record, we need to build a data base of who is paying what over what term of contract for these new internet connections. Okay? I know, for example, and my favorite example, is VTel's offering a product in their territory that is 1/20 of the price for 20 times the band width that Sovernet proposed to the Town of Plainfield on a five-year contract. Okay?

That is absolutely absurd. These are grant funded networks that the public has paid for and somebody was asleep at the switch when those conditions -- terms and conditions were allowed to go forward. The incentive for market competition, it may be that, -- I also want to echo the woman from St. Albans about the need for PEG Access and I would even expand upon that. The public education and government capacity, typically three to five percent of revenues or two or three channels out of 100, is some guesstimate numbers, those principles need to be applied and strengthened, not only in each franchise area, but statewide.

I mean, we need to interconnect these cable systems and we need those interconnections to include that bandwidth for public education and government. Okay?

It's somewhat -- not to offend, but it's absurd the amount of fiber and technology and expertise we have in Vermont that we're still running over this T1 technology with 1.5(Mbps) 4 second lag times. I mean, it is absolutely absurd where we could be doing symmetric, full, virtual presence to use Cisco's trade name. And we should be doing it all over the state. I mean, we're a small enough state with a bright enough population and a real forward thinking legislature. We need to actually use that opportunity as a laboratory and accomplish some of this stuff.

And these are part of the gaps that have happened from not having those two plans done. Okay? And I'm not pointing fingers; at -- you know, I know that our Director of Telecom only came on in the last few years and he's got to play catch up for years of issues before that, but it took really rattling some cages to get this process started, you know? And I have high hopes for it. Feel free to jump in.

MR. LARKIN: We've mentioned PEG and PEG is having a percentage, this was over the video system, cable television, movies, you know, short-term quickie, psycho sitcom companies, whatever. With internet, we are moving toward where everyone's over the internet.

What we used to call telephone, what we used to call cable -- and internet itself is carrying -- internet, obviously, is an oxymoron. And since they're all carrying video, all three of them are now carrying video, then the PEG money should be addressed in a requirement to pay PEG money, should be addressed to all players carrying video. It's television is television. Now, how do you carry it? That's why I say they're all one industry. And if one industry is going to carry telephone poles and pretty pictures on the TV.

I'm too old to know, but I'm told some young people, some of them don't even know what a TV is. I mean, they sit and do everything over the -- not even an iPad or something but just over the phone. I like to have pictures to look at with my old eyes. I can see even without these (indicating). But I think that that's the point that we've got to get the -- not only the revenue up, but if new technology, like if they start using different colored lasers and use the same fiber and just run 15 different lasers down there, all that capacity, PEG people should get the same percentage of that, whatever it happens to be. That's enough rambling. Thank you for your time.

MR. WHITAKER: That's a very good point. I'm glad you jumped in there.

Many customers are pulling their video, their Netflix subscriptions over their DSL lines. So why FairPoint isn't

paying into the PEG pot and I'm not an expert on pre-exemption, I won't pretend to be. The fact that our PEG channels are unable to get a crowd full of people here has to do with the funding, the staffing, the quality of the product. I mean, I'm frankly embarrassed for the quality of the PEG product. You know, it's -- we're not shooting high def -- or we're shooting high def we're not able to broadcast high def.

There's no obligation for the PEG channels to interconnect or share live feed for such an event such as the State of the State or, et cetera.

There's many things that are possible through taking the long haul costs out of interconnecting the PEG channels. Okay? Especially, if we're incenting or requiring the CATV operators to bridge their systems.

The long haul cost enables all of these possibilities for the PEG channels to create a statewide channel where whoever's got the best programming or spill over into the third or fourth channel. But there's no reason it shouldn't be equally as well done; microphones and video and color corrected and as high-def as anything else that's available on the system.

Charlie and I don't -- got together today to try to draft out a map and we didn't anticipate -- we were hoping to listen and build upon a structure of stuff that -- but we

didn't have enough prepared testimony to really give you sufficient -- I think we gave you a taste.

BURLINGTON

[Hearing was held August 25, 2014 at the Holiday Inn on Williston Road.

A total of four attended to provide comments, : Charles Larkin, myself, and two others]

MR. WHITAKER: I get -- I'll throw a few words in there since there is time available. For the record I'm Stephen Whitaker from Montpelier.

On the process issue again, I feel like I'm I might be repeating some of what I told you in your March hearing. That to a degree the Department is responsible for the lack of attendance here and not doing the plan for ten years, missing three full iterations, and letting the public engagement of the whole Telecommunications Planning process atrophy.

Now I've made a very specific proposal to your Commissioner of how to use the access media organizations and a series of roving workshops to educate the public, let the AMOs market the event, bring people together, videotape it, to use an outdated term, videotape, and educate the public on what the infrastructure in their area can do and cannot do, and what the options are.

I notice the survey that was delivered today is a survey of residences. The surveys of business --

MR. PURVIS: It's also business.

MR. WHITAKER: There's another one? Okay. I'll take a look.
Thanks.

With regard to this draft, not so much the process, I think I've belabored that point. The assessment of the current state telecommunications infrastructure would really need to describe exactly where, what services are available. Not in general, broad franchise areas, but we need to know where our fiber is. We need to know where our coax is. We need to know where the fiber is 20 years old. I mean where the copper, FairPoint, and where it's been replaced.

Assessment of the state systems. Now that's totally missing. There is a whole bunch of things that are totally missing, if you have a technical read of the statute.

You must be aware of that. No? The state recently built an ethernet ring around, I believe, Burlington, Rutland, Montpelier at least, 10 gigabit per second. That's got to be riding on fiber. It's hopefully protected, redundant ring architecture. The question is, who else is it riding on? Is it riding on Level3, is it riding on Burlington Telecom? Is it how reliable is it? What could have been done to make it more reliable? I mean are we now putting the entire state government operations in one basket of one potential failed equipment?

I mean these are the questions that need to be explored in your assessment of the state's telecom infrastructure. The microwave network is totally missing from the draft, the state colleges' network.

There is a whole bunch of pieces that were done in earlier drafts and were presented that my point is, that in order to re-engage the public and educate the public on how to participate in this process and I give you meaningful feedback, you really need to do the homework meticulously of what's laid out in the statute.

Even to the point of these hearings. Hearings are to be held on the final draft. You've only issued the public comment draft. So are we going to have a whole another set of hearings and court reporter costs? Good for you. When you finally get a final draft? And how are you going to get it adopted by September 1?

There is no way to not be critical of what's happened here. I'll have more to say on specifics, you know, in subsequent hearings, specific areas of it. But I thought it important to put on the record that the process, and as long as you want the Department... puts forth the poker face and doesn't acknowledge its failure, it doesn't -- it lacks the credibility to reengage with the public. I mean that's a fundamental rule of public relations. And I feel like the Department's advocacy role has really been damaged over the last decade or so.

That's all I have for tonight.

MR. PORTER: Thank you. Anyone else? (No response.)

MR. PORTER: Well thank you all very much. Some really, really good comments and some good stuff to think about tonight.

(Whereupon, the proceeding was adjourned at 7:46p.m.)

BRATTLEBORO

[Hearing was held August 26, 2014 at the Hampton Inn on Putney Road, with only Charles Larkin, myself, and two others providing comments]

MR. WHITAKER: Well, I will take a minute if we are going to conclude in 20 minutes. I got a couple more pictures for you. I'll be right there.

MR. PURVIS: Take your time.

MR. WHITAKER: I'm Stephen Whitaker, for the record, from Montpelier. I would like to elaborate further on the issue of the infrastructure inventory descriptions; maps, etcetera, in that I've made prior testimony about the need for the public or any business person or residence in need of services: Voice; data; broadband, whatever, to know what's available nearby from which vendors.

The 202d, the planning authority, I realize the language, the proprietary language that's in the modifications to 2222 for the action plan -- the action plan for broadband needs

to be part of your ten-year telecommunications plan. If they -- I don't think you're going to finish your telecom plan by December. It gives Kiersten time to put her plan together but in effect, it creates ambiguity, confusion and finger pointing of who's supposed to do what, but whatever would be in an action plan for broadband is what, in my opinion, needs to be in the Department of Public Service 10-year Telecommunications plan.

Secondly, the proprietary cover for voluntarily submitted information on where your fiber is; where your DSLAMs are, etcetera, under 2222 does not apply under 202(d). 202(d) specifically says that the department may require information to be submitted under the supervision of the Public Service Board. That is clean, it's elegant, it is authoritative, and it is appropriate venue. The Public Service Board is well equipped to untangle what needs to be protected under proprietary cover for trade secrets and what does not.

So you have the authority and the obligation to do a complete inventory of where the fiber is and where the equipment is. You don't need to . rely on -- and you are not bound by the more restrictive optional submission by venders under the modifications to 2222, 3 V.S.A. 2222. So, I thought I would call that realization. May be a little late, but I'm not the only one.

Here's a -- I would like to submit this photo of -- when the argument is made that we can't it's difficult to afford to built out to the rural areas of Vermont, it should be a little obvious why that becomes difficult because --

MR. PURVIS: Stephen, why don't you label your photographs before you give them to us.

MR. WHITAKER: Label them for what?

MR. LARKIN: Where they are.

MR. PURVIS: Just where they are.

MR. WHITAKER: I can tell you where they are. It will be in the transcript.

MR. PURVIS: Okay.

MR. WHITAKER: The first photograph submitted by this -- I'm not prepared with circles and arrows and a paragraph on the back of each one, right? tonight to quote Arlo Guthrie. Secondly --

MR. LARKIN: You didn't tell where it was, Steve.

MR. WHITAKER: This is the road between Burlington and Winooski.

MR. PURVIS: The road between Burlington and Winooski.

MR. WHITAKER: Yeah. The name of the road escapes me, but it runs right between the UVM campus and the old Trinity College campus.

MR. LARKIN: Is that Pearl?

MR. WHITAKER: I don't know the name of it. The main road from downtown Burlington to Winooski, and this is right where the state health lab is. And if you look, you can see four or five distinct strands of telecommunications carriers there. And if you go and count them up close, which you can do with zooming tools on these photos, there is about five different strands of fiber, five sheaths of fibers on Comcast's or on the coaxial carriers, the television franchise carrier's strand, and then there's probably a Level3 ring; there is probably a SoverNet ring; there is a FairPoint ring. I mean, you've got maybe a dozen different fiber sheaths on that same route and each of those fibers probably each of those sheaths probably has 72 or more fibers in it.

So, this is why -- this is the waste and overbuild which is directly connected to whether open access needs to be required and whether we need to push for reducing the overbuilds or eliminating the overbuilds and get the fiber out to the rural areas if you are going to meet the 2020 for goal of symmetric 100-megabit plus.

FirstLight, I believe, subject to check, that it is the new version of what Teljet was, and Teljet, I believe, provides their services over the prior Hyperion ring which became part of Level3's network, but they're offering 100-gigabit connectivity fiber with colocation and redundant, diverse-routed internet connections up to 10 gigabit. This is in Vermont. This is in Burlington. This is the infrastructure that we have available. Now, this, I want back but you can find it.

MR. PURVIS: Okay.

MR. WHITAKER: My point is, this is what needs to be in the plan, exploration of these services and these vendors and whatever geographic reach is. Of course all of them will say, we don't want to tell you where our geographic reach is, because if you point us to a customer, we'll build to them, okay? And one of the most difficult challenges of what Charlie likes to call ONA-2 which will be not unbundling FairPoint, Verizon's network but unbundling the rest of it for open access will be, how do you -- if, say, a competitive local exchange carrier says they want to -- some fiber from FairPoint or Comcast from this location to that location. The location identifies the customer. How do you prevent the incumbent from then taking that information and going and offering them a sweeter deal?

Leave that to the board, but my point is, that's one of the down sides to competitors identifying where their next customers are.

That's sufficient for tonight. I just prepared on one topic, a very narrow one.

MR. PURVIS: All right. Thank you very much, Steve. Would anyone else like to speak again?

BARRE

[Hearing was held August 27, 2014 at the Barre Auditorium, with a total of eleven people attending to provide comments]

STEPHEN WHITAKER: I will make one comment very brief.

THE REPORTER: Can I have your name, please?

STEPHEN WHITAKER: Stephen Whitaker. I would like to use an analogy I think that we often are hearing again and again that we don't have the authority to regulate broadband services, information services. I But we do have a right to regulate our right-of-way, and the pole attachments, and the dark fiber that is spun and hung on those.

There is no information services flowing over dark fiber. And they are utilizing public right-of-way. And we need some aggressive lawyering, we need some strong public advocacy to rewrite this plan. Smirk free. All right. Thank you.

MONTPELIER

[Hearing was held August 28, 2014 at the State House. Seven people who attended provided testimony. A CD change resulted in a transcript without my name recorded. A personal recorder allowed me to complete the transcript.]

CO-CHAIRMAN BOTZOW: Steve Whitaker?

STEPHEN WHITAKER: Good Morning and thank you for convening this hearing.

"Houston, we have a problem"; is where I would start. I would echo Charlie's conclusion; Mr. Larkin's conclusion, that the plan should be withdrawn.

The proposed draft plan should be withdrawn and reworked completely. Alternatively I believe the Legislature has authority under 202d to, by joint resolution, require that the pace be accelerated. So theoretically this could be adopted because you really don't have much to say about it, and then in January a joint resolution could potentially direct the process begin again to fix its deficiencies.

I think the deficiencies are too great to -- I think it would be an insult to the public and the Legislature's intelligence for the Department to adopt the plan as it is. Many of the deficiencies of the draft were laid out in Mr. Larkin's letter. I would point to a few examples. In a description of state telecom infrastructure the 10 gigabit network that was recently turned up by the DII is not

described in there. It may or may not be a ring architecture for redundancy and self-healing architecture. It's been funded with Internal Service Funds which were not reviewed by an independent expert review and life cycle cost benefit study as required under statute. That's one example.

The state libraries have another network of 43 libraries all connected by fiber, and I applaud that effort by the way. That's the best thing yet to come from the federal grant is SoverNet has connected 43 libraries at one gigabit speeds. 10 gigabit speeds. I believe one gigabit of that is available to -- for the internet, but that allows full symmetric video conferencing without the defects that - of lag and delay. I believe other expert engineers and fiber builders will refer to jitter and latency. I'm not qualified to speak about jitter and latency.

I would offer an example of the overbuilds that were referred to by a couple of your witnesses. I'll show you this and then let you pass it around. I didn't make copies for the whole committee, but that's one example on, I believe, the street that runs between UVM and Trinity College campus, but Comcast has about seven sheaths of fiber there, each probably 72 or more, and then there's three or four more fiber vendors on the same pole, all in one -- that one corridor.

Now open access is stated and has been for some years in the goals of the telecom plan. They are dismissed by the

Department's draft. 'We don't know what it is.' 'We don't know how to do it.' It's deeper than that. I think they don't want to do it. There is authority. I've consulted an attorney and there is authority under the pole attachment public right-of-way for the state to exert jurisdiction and require the sharing of Comcast's dark fiber. There's no argument to be made that the unlit fiber that Comcast has in place is being used for information services and therefore unregulated. It is plain old infrastructure in the public right-of-way and we need to know how much of it is where, how many strands are lit, et cetera.

The Department claimed that it had -- it didn't have the authority to share the maps and it didn't know where the fiber was. You did pass in the recent Act 190 I believe it was, proprietary protections for voluntarily supplied data from the telcos, from the cable companies, under the section that requires the broadband plan, action plan, to be developed by this December. Actually, you rolled it over until this December. But 202d includes provisions -- already includes provisions, for the Department to require submission of data from the carriers under supervision of the Public Service Board. So the Public Service Board is the proper venue to decide what needs to be public to inform this process and what needs to be legitimately deemed as proprietary. Okay. So you've got two conflicting statutes. One says that, 2222 says that the companies may voluntarily supply their infrastructure information. 202d says the

Department may require submission of that information and the Public Service Board will determine what needs to be secret.

The state microwave network is not detailed; its capabilities, its options. The Agency of Transportation's fiber running down the interstate from Sharon to Hartland is not detailed in the plan. On and on and on.

I mean I've been doing this role of accountability of government information technology and telecommunications for over 20 years, and early on in the process I put together the maps of these networks and the Legislature viewed those and realized that we were uninformed, and Act 188 of 1992 was very similar circumstances. If you're not familiar with that history, I do have a few copies of it and she can make some more. I mean your staff would.

In that context the dominant telecommunications company at the time was NYNEX. They proposed an incentive regulation plan. Incentive regulation plans are required to be measured against the Ten-Year Telecommunications Plan. The Ten-Year Telecommunications Plan was not done.

Similar circumstances as we're in today. The Legislature passed a bill Act 188 of '92 and directed that the Public Service Board would suspend proceedings on that incentive regulation plan while the Legislature convened a Joint Committee to review the telecom plan and determine if it was

truly up to the standards of statute and whether it met the needs of Vermonters.

That's exactly what needs to happen today. I mean the precedent is there. The language is already drafted for the most part. Here's a few copies of it. I believe I've already given it to some of you, but --

CO-CHAIRMAN BOTZOW: You know you can always submit these things electronically.

STEPHEN WHITAKER: I got them out of your database.

CO-CHAIRMAN BOTZOW: They will be on the web site. They will be part of the record. Anybody who has anything they are bringing on paper they will be in there just as we've been doing all winter.

STEPHEN WHITAKER: I think I would like to stay general right now in the sense that I believe that the Department of Public Service, whose charge is to be the public advocate, has lost its compass and it's been years in the making, ten years without a plan, and this plan only came forth because I demanded copies from the Department under Freedom of Information request, of the plans and the drafts, and they basically said we don't have any and that got the ball rolling.

This is similar to what happened years ago and the stakes are even higher now because of the enormous amounts of money

being plowed into Vermont. The VTel grant did not include open access provisions.

The proprietary language to protect the infrastructure information so that we can't plan for different scenarios or give you informed input on where infrastructure should be built. The Department should have been arguing against those being put into law. They already have the law that allows them to get what they need, but we can't plan a network or network alternatives if we can't know what was paid for. A quarter of a billion dollars of public money has been invested in Vermont's networks and we're -- it's all secret. I mean this is absurd.

I mentioned that incentive regulation because that was the context in which the joint committee was convened. The following year the Legislature passed a bill to create the Joint Information Technology Oversight Committee, and again that is warranted or possibly, because you have DII running haywire with internal service funds and billing all the agencies. They are actually competing with the private sector by collecting money for a full time equivalent network engineer to manage the libraries network. I mean there are plenty of companies in Vermont, and we need to grow more, that manage these networks. We don't need to have government competing with the private sector doing those functions. Most of those libraries are not state libraries.

Under incentive regulation there is a provision where the State has to hire a public advocate, an independent public advocate. In that era it was Dick Saudek, former Commissioner of the Public Service Department, former Chair of the Public Service Board. He was hired to represent the public interest because the Department was compromised. It had already signed on to the contract.

I have three handouts that I've given to Agatha. They all have them. Okay. The third one -- the first one is Mike --

Chairman Botzow: What I want you to do is focus -- You're at your ten minutes. I would like you to focus on the two or three, whatever, points very crisply, what you want to get on the record, and you -- we want to make sure you get heard.

STEPHEN WHITAKER: Okay. I wasn't aware of how much time I was running. The e-mail to Chris Recchia suggesting a process whereby the public engagement into this process could be reinvigorated, was not responded to; was ignored outright. The ten years without an opportunity to speak to the plan has resulted in two or three people coming to each of these hearings. I've been to each hearing so far and literally only two or three people speak.

There's a detailed process of what should have -- could have, should have happened. It's fairly elaborated on in the e-mail to Charlie which follows, and the third one is from

Seven Days, this week's issue of Seven Days, and it appears that the Department and the Governor have already signed off on the Comcast deal, which will incorporate -- subsume Charter Communications into Comcast in Vermont. No investigation.

So if that is a parallel to incentive regulation, then it's time to hire an independent public advocate to pick up the slack for the Department until they get their hearings again.

These are things that I know you can't do today. It's between bienniums. These are arguments for why the joint committee should be reconvened and these issues should be explored in more detail. Thank you very much.

Chairman Botzow: Thank you very much.

SAINT JOHNSBURY

[Hearing was held September 4, 2014 at the Catamount Arts Center, with no one but Charles Larkin and Stephen Whitaker attending to provide comments]

MR. WHITAKER: All right. I'll put in two words just on the-- the process again.

In that Charlie and I made the effort, Mr. Larkin and I made the effort to come out for your February hearing. And we gave very detailed and specific testimony on PEG access funding, interconnected PEG access systems, et cetera. And it was totally ignored in the draft that was put out months

later. That would tend to dissuade the general public from thinking that this process is really meant to gather information to be used in a plan.

I did ask in Montpelier if conduits were being put in, while the district heat had most of the downtown buildings accessible to the basement, and it was not -- it was not being done. We asked today when we arrived

in town if St. J was putting in any conduits. As far as the person knew, there was none going in. And that tells me that the guidance that would have been in the last three iterations of the 10-year plan would have sparked some recognition that we need to be thinking about this. That's a missed opportunity of an enormous magnitude.

I don't know what's going to be done about it. I believe that if the Department proceeds to adopt a plan without another set of hearings before the legislature on the final draft, and proceeds to put forth a plan that does not include all the statutorily required elements, that it will not be in compliance with law. And if you continue to persist that it is, the Department will further lose credibility, because it will become more and more evident that it is not.

It's time for a real plan. And we would like to see one. That's what you're paid to do. Thank you.

MR. PORTER: Thank you.

STRAFFORD

[Hearing was held September 18, 2014 at 6 pm at Barrett Memorial Hall.

A total of eight people attended to provide comments]

STEVE WHITAKER: I think that much of this discussion is passé in that this statute now has a goal of symmetric, 100 megabit by 2024, and there is also a requirement that we not waste money on short-lived technology that will soon become obsolete. So much of this discussion about 4/1 and 10/1 does not belong in the plan. I mean, it's --

MARK MacDONALD: Right.

STEVE WHITAKER: -- it's really a distraction. Now, I would like to correct a few of the comments I heard earlier about that pole attachment proceeding, and that was Act 53 of 2011, which actually required the Public Service Board, by rule, to conduct a proceeding and effectuate a revised rule to implement an accelerated pole attachment dispute resolution process, no matter whether it's small companies or big companies. It was across-the-board rule making. And the Board didn't do it and the Department didn't lean on them to do it. Okay, those are two serious failings of a legislated mandate, and that's what we count on the Department to do, is to advocate for the public and indirectly for the ECFibers', and it didn't happen, and y'all had the bully pulpit as the Department to insist the Board do that. They had the mandate to do it. So I want the record to be clear on that.

The fact that it sunset this last July and that testimony before the committee did not ask that to be extended and renewed such that that proceeding, by rule, would happen is another oversight or negligent, in my opinion. One of many.

Secondly, the -- the -- there was much discussion at the earlier hearing today about how valuable the Orange County fiber connect project and some of the others are. Now, I want to extend that concept further, because, even though the Public Service Department and Board cannot regulate information services, we clearly have the authority in state law to regulate our right-of-way. And these companies are using our public right-of-way, and many of the fibers are dark; Comcast has dark fiber right across the state, FairPoint has dark fiber across the state, many, many miles of dark fiber, which can be regulated if we have an aggressive public advocate petitioning the Board for an investigation and examining where that is.

Now, I received a response last night from your -- from Clay, to my public records request for all records and responses from the utilities, pursued under the 202d authority you have, to require infrastructure information from the utilities. You've admitted in prior settings that you don't know where the fiber is. You have the statutory authority to demand to know where that fiber is, and you didn't do it. So this whole process is somewhat of a waste because we still don't know where the fiber is, so we can't

put an accurate number on how many miles of fiber need to be built. We need to establish clear open access, again a 202c goal, set by the legislature, to the dark fiber. There's no way that Comcast can claim that they're un-regulate-able when they're -- that fiber's not even lit. There's no information services running over it. It's a piece of infrastructure sitting in the public right-of-way, and it's accessible for open access, and it can be a condition of their CPG. So I'm imploring upon you to get serious and -- about advocating for what we already have the authority to do. I'm hearing so many reasons why we can't do it, and I've grown weary of it, if you can hear that in my tone.

Yeah, the fact that I learned yesterday that you've never even asked the companies where their infrastructure is, in the course of preparing the plan, basically makes this process premature. That until you've done your assessment of state networks, of state infrastructure, and where the fiber is and where the DSL is, you don't have the preliminaries in place to draft a plan upon which we can provide meaningful comment.

So thank you for your time. Sorry it's not sweeter.