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To: Britaney Watson, Digital Equity Officer, VCBB

From: Toni Clithero, General Counsel

C: Christine Hallquist, Executive Director, VCBB

Re: Act 71 Context for Digital Inclusion Efforts

Date: July 31, 2024

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This memorandum concerns the statutory context for VCBB's role in digital inclusion efforts, both in general and in connection with VCBB's Digital Equity Plan and NTIA's Digital Equity Competitive Grant Program.

#### General Statutory Context

First, with respect to digital inclusion efforts in general, Act 71 incorporates both the affordability of broadband service plans and the affordability of the devices needed to access broadband. Specifically, Act 71 makes the affordability of broadband a requirement of the Act by making it one of the four criteria (collectively the Broadband Criteria; individually Broadband Criterion) to fulfill the purpose of the Act, which is to provide "universal access to reliable, high-quality, affordable, fixed broadband." 30 V.S.A. § 8081. This fundamental requirement is premised on the legislature's recognition of the "critical need for broadband access and adoption" cited therein, as well as the "socioeconomic disparities between the connected and the unconnected" that were accelerated by the coronavirus pandemic. *See* Legislative Findings and Intent, Act. No. 71, § 1(a)(7).

The Act further provides the Board with what the legislature characterizes as a "necessary and convenient [power] to carry out and effectuate [its] purposes and provisions" to develop policies or recommend programs that "promote access to affordable service plans." 30 V.S.A. § 8084 (a)(6)F). Additionally, the Act requires the Board to prioritize construction grant applications under the Broadband Construction Grant Program that support low-income and disadvantaged communities and provide consumers with affordable service options. *See* 30 V.S.A. 8086(b)(4) and (6), respectively.

Further, the Act authorizes the Board to make recommendations for authorizing expenditures from the Vermont Community Broadband Fund for:

- a. Digital inclusion efforts "such as subsidized customer equipment installations and broadband service, grants for long-term affordability planning, and outreach

- and digital literacy training”; and
- b. “Building-wide Wi-Fi installations at multi-unit affordable housing” to provide free broadband services to residents.

See 30 V.S.A. § 8089(b).<sup>1</sup> These recommendations are to be made with input from relevant stakeholders.

In addition, as part of the Board’s authority to provide communications union districts (CUDs) with administrative and technical support, the Board is mandated to provide CUDs such support with respect to the “planning, development, and implementation of broadband projects.” 30 V.S.A. § 8084(a)(6)(B) and 30 V.S.A. § 8087(a). Because affordability is a Broadband Criterion, Act 71 implicitly authorizes VCBB to provide the CUDs with administrative and technical support to ensure that broadband projects are affordable. At a minimum, VCBB has been providing this support in its input and advice to the CUDs with respect to their development of sustainable business plans.

### VCBB’s Digital Equity Plan

The VCBB has received approximately \$5.8 million to plan and implement its Digital Equity Plan (DE Plan) (approximately \$518k for the DE Plan and \$5.3M for the Digital Equity Capacity Grant). As cogently described in the Digital Equity Officer’s (DEO) May 13, 2024 presentation to the Board<sup>2</sup>, the DE Plan includes a needs assessment, an asset inventory and an implementation plan. The DE Plan is a statewide initiative which seeks to close the digital equity gap. It defines Digital Equity as fair and equitable access to digital technologies, including access to broadband and devices as well as training in how to use those devices to access broadband.

The DE Plan focuses on partnerships with organizations that are already helping Vermonters, such as other state and social service organizations and local community anchor institutions. The five primary objectives of the DE Plan are to:

- Build out broadband to all un/underserved addresses in Vermont;
- Ensure sustainable community-driven solutions;
- Ensure the affordability of broadband service plans and devices;
- Empower individuals to access and utilize broadband;
- Enhance workforce development initiatives.

See <https://publicservice.vermont.gov/document/digital-equity-capacity-grant-planning-presentation-51324> .

VCBB’s Capacity Grant will be utilized to:

- Conduct research to determine baselines and set benchmarks;
- Develop a statewide Digital Navigator Program;
- Build capacity by providing subgrants to organizations representing Covered Populations;
- Expand workforce development to support the broadband industry and the digital economy; and

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<sup>1</sup>These recommendations are mandatory for the first annual report. See *id.*

- Develop a regional program to provide access to appropriate devices for accessing broadband.

The development of the DE Plan and the funding to implement it pursuant to the DE Capacity Grant, constitute the basis for VCBB's digital inclusion initiatives with the funding provided by the NTIA. Unlike VCBB's administration of its BEAD program (VTBEAD), a competitive program primarily focused on building broadband infrastructure, the DE Plan provides for a collaborative approach to achieving its goals. Thus, the DEO has considerable latitude in deciding with whom and how to go about achieving the goals of the DE Plan. Given the role of the CUDs in broadband build out, it is reasonable for the DEO to defer to VCBB technical staff charged with assisting the CUDs in the "planning, development, and implementation of broadband projects" with respect to the primary objective of broadband infrastructure deployment, as required under 30 V.S.A. § 8087(a).

### NTIA's Digital Equity Competitive Grant

Whereas NTIA's Digital Equity Plan and Digital Equity Capacity Grants were available to the states (and territories), its Competitive Grant Program (CGP) makes grant funds available to a "wide range of entities to address barriers to digital equity faced by Covered Populations." *See* DE Competitive Grant Notice of Funding Opportunity (NOFO) at p. 2. These entities include state entities, nonprofits, foundations, community anchor institutions, workforce development organizations and partnerships among these entities. *See* NOFO at p. 3. Like VCBB's DE Plan, the objectives of this competitive grant program are to "achieve digital equity, promote digital inclusion activities, and spur greater adoption and meaningful use of broadband among the Covered Populations." *Id.*

It is my understanding that VCBB has decided not to apply for this program or partner with any eligible entities. As a result, it appears that VCBB's role with respect to this grant program will be limited to providing information and letters of support to other applicants. In this capacity, given the competitive nature of the CGP, it is recommended that VCBB make reasonable efforts to be transparent with the information it is sharing and its decisions to provide letters of support. Therefore, a webpage that provides updates that include that information may be beneficial to the community of potential applicants. A summary description of the factors VCBB will apply to consider whether to issue letters of support would also provide the clear, transparent guidance that VCBB seeks to provide to support this community.

Please let me know how VCBB's legal staff can help support these efforts or answer any questions raised by this memorandum.