

**Committee on Energy and Commerce**  
**Subcommittee on communications and Technology**  
**Hearing Entitled “Closing the Digital Divide: Broadband Infrastructure Solutions.”**

**January 30, 2018**

**Responses of Elin Swanson Katz to Additional Questions for the Record**

**Subcommittee Member - The Honorable Yvette Clarke**

**I have learned by representing the 9th Congressional District of New York and the Smart Cities Caucus that cities are eager to bring high-speed broadband and SG technology to their constituents. I am concerned, however, by the recent adversarial tone between industry and cities. I think it is wrong to characterize cities and industry as adversaries and not partners.**

*As a state consumer advocate for public service utilities and internet service provider ratepayers and broadband users, and as the head of the statutory State Broadband Office (which is within the Office of Consumer Counsel), I have learned that my primary constituency is communities of all sizes, including their residents, businesses (small and large), and community anchor institutions. By developing champions and allies within each of the state’s 169 municipalities, I not only fully understand the needs and problems of the state’s ratepayers and broadband users, but I am able to mobilize them to support administrative, judicial, and legislative initiatives that must be mounted in order to push back against monopoly/duopoly utilities in order to acquire a fair and equitable deal for communities.*

*The answer to your question in part depends on how your definition of “industry.” Assuming that you mean the incumbent internet service providers (ISPs), I too have seen the tension between the ISPs and the municipalities. As cable and telephone companies recognize the disruption to their business plans in all markets of the United States from edge providers and rapidly emerging changes in technology, they are essentially committed to maintaining the business model they’ve created, and thus must fight back against advancing technologies. Everyone recognizes that fiber optic network infrastructure is certainly the transmission technology of the future, but the incumbents are often saddled with multi-billion dollar sunk cost investments in copper and coaxial cable technologies, which continue to provide great revenues, but which are quickly becoming obsolete.*

*We have tried to work with our incumbents with and on behalf of our municipalities, but we have found the incumbents become extremely defensive when we identify unserved or underserved areas, especially within our urban communities. Nonetheless, it is my hope that as we head towards the inevitable “fiber future” where we see fiber everywhere, that we can collaborate with our incumbents and munis to develop and share fiber infrastructure. I also see much hope with small ISPs who are looking to enter new markets. They are very willing to work with our municipalities. In fact, the first community-wide fiber network in Connecticut is being developed in East Hartford through a public-private partnership between SiFi Networks and the town, SiFi being a new entrant to Connecticut.*

*If, on the other hand, your focus is on “industry” meaning non-telecom businesses, we see much collaboration. Residents and businesses are actually allies in the market for internet access since the reality is that the incumbent providers focus, rightly and pursuant to law, on their shareholders more than on their customers.*

*Thus, it is essential that cities and industry must band together as partners and not adversaries if they are to achieve the goals of better, cheaper, faster internet access, equitably provided to all communities and demographic groups. That is the goal of my office and my staff and I fight a daily battle to enlist the cooperation and collaboration of cities and industry.*

*I think engaging with the incumbent internet service providers is an essential element of my role as a state utility services consumer advocate, and while there is often fearsome resistance to change and the market disruption that is central to internet access these days, it is part of my job to support a transition by the incumbents to a new business plan. Continuing to protect their monopoly market shares in the inter access market does not make sense when the future is so profoundly disrupting old models. These businesses are like “melting ice cubes”- they look solid and real, but they are melting away . It would be like trying to protect the market share of typewriter companies in the face of personal computers and laser printers.*

**Can you all commit to helping reach a good faith consensus on how to bring high-speed broadband and SG technology to cities aiming to deploy smart technology for their constituents? What are your plans for this commitment and engagement?**

*Consumer Counsel Katz, response: My short answer is yes, absolutely, I make that commitment. The Office of Consumer Counsel and State Broadband Office have engaged in developing RFI/RFP documents on behalf of dozens of Connecticut municipalities, ranging from New Haven and Hartford, to collaborations of rural towns, and the suburban towns in between for many years now. By preparing for such engagements, the cities learn what they must do in preparation for requesting funding and construction help from private industry in order to bring digital inclusion and fiber network broadband internet access each and every one of their citizens, residents and businesses. Helping the communities in Connecticut locate and achieve funding from the state and federal governments, as well as from private equity and other financing institutions, is a fundamental goal of my staff and I in our daily work in helping communities recognize the benefits of affordable broadband internet access, equitable distributed to all demographic groups.*

*As the President of the National Association of State Utility Consumer Advocates (NASUCA), I can also speak to the effort across the electric sector to define smart grid technology (there are myriad definitions of a “smart city,” for example) and identify how it can be effectively deployed to municipalities. In my position as President, I continually push for more collaboration and dialogue between the electric sector and the telecommunications sector on cost-effective infrastructure deployment. If our electric utilities are creating private fiber networks to support smart grid initiatives at ratepayer expense, then I feel strongly that that infrastructure should maximize its benefits to those ratepayers. Why can’t fiber deployed by an electric utility to create a smart city also be used to provide affordable high-speed broadband to those same consumers? It can be, but there’s little incentive for most electric utilities to plan for such dual use. I will admit that this is at present a tough row to hoe – the incumbents don’t want to engage in this dialogue, and the electric utilities are busy focusing on their own needs. But this is an area in*

*which we need to keep pushing and expecting synergies and maximum usage of ratepayer-funded infrastructure.*

**Will you commit to working with my office to resolve some of these disputes, and find a path forward that works for all consumers, cities, and the industry?**

*I would be delighted to partner with your office, Representative Clarke, since I'm sure that Brooklyn's Ninth Congressional District, the center and heart of Brooklyn, does not differ greatly in the problems and potential solutions that we find in our state's major cities, many of which my office already works with on a regular basis. Bridgeport, Hartford, and New Haven all have gotten the "broadband bug," and recognize the digital inequities that the incumbent providers have imposed on cities like these.*

*For instance, I am incensed and my testimony before your Subcommittee on January 31, 2018 reflected my passion about this issue, that the current Administration and the ISP industry are propagating the myth that only "rural America" needs help or is unserved by affordable broadband internet access. This is patently untrue as the experience of my staff in the "fields" of Connecticut's major cities demonstrates: the incumbent market companies have turned their back on low income inner city citizens and businesses, charging exorbitant rates for extremely slow service. The virtually complete deregulation of these services causes there to be little or no recourse for these citizens and businesses. Intentional or not, this is de facto "redlining" of poor ethnic-minority urban communities.*

*Rural areas are in fact needy, of course, and Connecticut specifically does not have rights to USDA funding or other "rural" supports from the federal government due to population rules, thus cutting off potential funding. However, urban areas also suffer from a lack of subsidies for urban poor, and there is an alarming number of Connecticut residents and businesses that are left behind as the digital age progresses, but passes them by. As I said in my testimony, if it's happening in Connecticut, the wealthiest state in the nation, it's happening everywhere.*

*I commend this report by my Office for your attention:*

[http://www.ct.gov/occ/lib/occ/2016-0301\\_broadband\\_deficiencies\\_in\\_connecticut.pdf](http://www.ct.gov/occ/lib/occ/2016-0301_broadband_deficiencies_in_connecticut.pdf)

*The OCC conducted site visits at business locations in urban and rural areas to investigate a small sample of broadband customer experiences.*

*Although Connecticut is a prosperous state with large areas of urban and suburban densities, Connecticut businesses, institutions, and residents have significant challenges obtaining broadband services.*

*Our expert, CTC Technologies, which is headed by the amazing Joanne Hovis who also testified with me, found a range of serious broadband challenges in the State, including:*

- 1) Maximum speeds are often far less than what businesses need for their current operations*
- 2) There are limited or no affordable competitive options for broadband services for businesses in urban areas*

3) *Businesses' growing needs for broadband will further exceed the available broadband services*

4) *Businesses face long delays in obtaining services, or are unable to obtain service even when infrastructure is relatively nearby.*

*Further holdings included:*

*Small and medium-sized businesses are being constrained by lack of broadband infrastructure and, where infrastructure is available, lack of competitive options (leading to higher prices and limited service).*

*All of the businesses we visited in Hartford reported that they are hampered by the low speed and quality of their existing services from the telephone and cable incumbent internet service providers. The business owners also identified the cost of those services as an area of concern.*

### **Subcommittee Member - The Honorable Anna G. Eshoo**

**As Congress explores how to remove barriers to broadband deployment, do you believe that targeted federal legislative solutions like CLIMB ONCE and the Community Broadband Act, which simply open the doors for local autonomy, can be helpful in expediting connectivity and economic development?**

*Climb Once: The Connecticut Office of Consumer Counsel, which includes the Broadband Office, has been a national leader in initiating novel and successful ideas for streamlining and increasing equity in the public rights of way (PROW) in our state. I have said more than once that "utility poles are sexy," because they are the ugly, unsung heroes of broadband deployment.*

*We have convinced the state regulator to order a "Single Pole Administrator" (SPA) in order to produce a far more efficient pole management system instead of the nearly universal dysfunctional lack of management usually found in PROW processes across the US. An element of that is a centralized database detailing the infrastructure on the nearly 900,000 poles in Connecticut, and which provides a process for notification of work to be performed, a timetable for each attacher to follow to accomplish their work, and a system by which the SPA has the authority (as an agent of the state regulatory agency) to perform work that has not been accomplished by an attacher in a timely fashion.*

*We hope this process will soon (or eventually) incorporate a Climb Once (or One Touch) process, which is an element we continue to battle for in spite of opposition from the local telephone companies. My staff recognized long ago that to construct high-speed networks, broadband providers need access to utility infrastructure, such as utility poles and conduits, on a consistent, cost-effective, and timely basis. The expense and complexity of obtaining access to public rights-of-way in some jurisdictions increases the cost and slows the pace of broadband network investment and deployment.*

*In particular, access to utility poles is an essential and generally time-consuming part of the process. Building out a new network within a metro area requires running fiber along tens of thousands of poles. The process of getting poles ready for attachments—known as "make-ready" work—typically requires asking other companies to move their existing communications*

*equipment to make room for a new entrant's equipment on the same poles. Oftentimes, there are multiple attachments on the pole already (e.g., telecommunications, cable, etc.).*

*Currently, operators move their lines sequentially—creating delays and causing multiple disruptions in a neighborhood. Imagine being a new attacher and having to reach out to as three (or more) separate companies for every single pole, and to get approval from each of them to move their lines or to wait for them to sequentially schedule their own workers to effectuate the move. This approach adds months (if not years) to the construction schedule, and may make it prohibitively difficult for competition and faster speeds to come to many markets. What's more, the cost of make-ready can be both high and unpredictable, varying widely among providers and poles.*

*We are hopeful of actually achieving a ClimbOnce process to incorporate the electric companies in our state which serve as our Single Pole Administrators.*

*Similarly, with regard to the Community Broadband Act, I and my Office have always supported this fabulous idea, one that may be said by some to be ahead of its time, but which I say is the most direct path to the inevitable future of provide affordable broadband internet access to all citizens, everywhere. My office has been fully engaged in the promotion of affordable broadband <<https://en.wikipedia.org/wiki/Broadband>> access for a decade now and our focus has always been on supporting municipal governments with the rights and means to provide telecommunications capability and services. We recognized long ago that neither the federal government nor the states are likely to presently engage in supporting municipal fiber networks, but rather that communities themselves are the most likely to make this happen.*

*While Connecticut does not now suffer from a state statutory ban on public broadband deployments, there is extreme resistance to municipal broadband from the incumbent telephone and cable providers, and their allies in the executive and legislative branches of state and municipal governments. In fact, in every legislative session since its creation, we have had to fight fiercely to preserve the State Broadband Office, which was created in 2015. We have survived, quite frankly, because of a small but dedicated (and growing) band of legislators who understand that a state that hopes to implement progressive broadband policy needs an office to do so. My office therefore expends great energy and time on the goal of eliminating existing barriers to broadband development, and thus we completely support the provisions of The Community Broadband Act.*

*As noted in my comments and elsewhere in these responses, my Office has long been a central player in supporting municipal efforts to develop public-private partnerships with finance and fiber construction companies to provide public telecommunications services to overcome the market resistance and digital inequities that presently exist across Connecticut and the US.*

*I would be delighted to help you in any efforts to promote S.742 in the hopes of achieving federal statutory support for the work that my Office is now performing in Connecticut.*

**A recent Harvard study found that contrary to claims that municipal broadband, or even the threat of municipal broadband will reduce network investment, it is actually the state bans on municipal broadband that result in less overall investment in deployment, and that community-owned fiber to-the-home (FTTH) networks in the United States generally charge less for entry-level broadband service than do competing private providers, and don't use initial low "teaser" rates that sharply rise months later.**

*My office has worked with the Berkman Klein Center for Internet & Society Research for many years and we greatly admire their work, including the January 2018 article you've cited, [Community-Owned Fiber Networks: Value Leaders in America](https://dash.harvard.edu/handle/1/34623859)<<https://dash.harvard.edu/handle/1/34623859>> which detailed from comparisons in 27 communities that most community-owned FTTH networks charged less and offered prices that were clear and unchanging, whereas private ISPs typically charged initial low promotional or "teaser" rates that later sharply rose, usually after 12 months. The authors found that in 23 cases, the community-owned FTTH providers' pricing was lower when averaged over four years.*

*As noted above, we regard our constituency to be the 169 towns of Connecticut since we believe that it is the communities of this country and our state that have the gumption and determination to overcome the resistance of the incumbent ISPs to implementing affordable broadband internet access, including by construction of fiber networks. Our own research has demonstrated that the incumbents operating in Connecticut overcharge ruthlessly and have little or no business plans to invest capital expenditures in advanced technology, except in the most profitable areas, which are usually densely populated and/or most affluent. I have personally asked the management of Comcast in our state when they intend to bring DOCSIS 3.1 to the residents, businesses, and community anchor institutions, and the response has always been a hedge or hollow promise. The telephone company, Frontier, is teetering on bankruptcy and is very unlikely to make any investments in Connecticut that would make a difference in digital equity or access.*

*Thus, we firmly believe that it is the role of the municipalities to step up and make the effort to develop public-private partnerships with investors and construction companies that have the foresight to agree that fiber networks are the key to creating affordable broadband internet access for all addresses across Connecticut.*

**Doesn't that demonstrate that consumers need more competition?**

*Absolutely: we have demonstrated over the last decade that my Office has been actively engaged in promoting affordable broadband internet access for all addresses across Connecticut, that 1) there is active and desperately needed demand for broadband internet access, 2) the supply provided by the incumbent internet providers is inadequate and too expensive for a high-tech state like Connecticut, thus depriving its residents and businesses of the access they need at the prices they can afford, thus leading to the conclusion 3) that competition is needed in the market to drive the incumbents to make the necessary investments to bring Connecticut into the Digital Age, or to drive the incumbents out of the market by reducing their market share through the provision of better, faster, and cheaper internet access.*

*As I serve as the advocate for electricity, natural gas, water AND telecommunications, I know from my work in the utility space that to protect consumers from monopoly power, you either regulate them or introduce competition. Since there is at present not much hope of regulation of our powerful incumbents, the ONLY solution to protect consumers from "monopoly rents" is competition. Unfortunately, I have found that everyone loves competition except for when it comes to their business.*

**Do you agree with the FCC's determination last April that a sole broadband provider counts as a sufficient level of competition?**

*Absolutely not. The April 2018 proposal from FCC Chairman Ajit Pai will undoubtedly hurt small business customers of ISPs. Our Office represents not only residents and community anchor institutions across Connecticut, but a large part of our time and effort is poured into advocacy on behalf of small businesses. It is small businesses that have the desperate need for affordable broadband internet access, but which lack the resources to pay the astronomical and quite ridiculous prices demanded by the ISPs operating in our state. These charges can actually be \$10,000 a month for less than one gigabit of access speed, and that following many thousands of dollars charged for the initial construction of a fiber line, even simply from a state road into a building 50 feet away!*

*The FCC plan to eliminate price caps in much of the business broadband market uses an unfair test for determining whether customers benefit from competition. Even if a business that needs broadband has only one choice today, the FCC plans to consider the local market competitive if there's merely another broadband provider within a half mile. As we have seen time and again, half of a mile away can seem like the distance to the moon for a small business if it costs \$100,000 or more to connect.*

*Small businesses want better broadband service at lower prices—they shouldn't have to accept a lower level of service to reduce costs, or pay more for the same services. In Connecticut, we are already seeing the ILEC (Frontier) attempting to charge higher rates for wholesale broadband service than they do for retail service, much like the legacy telephone market did. If the CLEC industry fails to ramp up, which seems likely in light of the new Administration and Pai FCC conduct to date, then the market will not provide the level of competitive pressure for this business segment that would create price relief while increasing provision of adequate service quality and capacity.*