The ECFiber case: Point-Counterpoint

ECFiber board chair F.X. Flinn and GWI's northeast division president Tom Cecere explain the key points of contention

By Tom Ayres

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A lawsuit filed in March by the Maine-based Biddeford Internet Corp, also known as Great Works Internet (GWI), against regional internet service provider ECFiber, continues to move forward before Judge Mary Kay Lanthier of the U.S. District Court for Vermont in Rutland. The suit accuses F.X. Flinn of Quechee, the chair of ECFiber's governing board, of trying to "poach" GWI's business in the more than 30 central and southeastern Vermont communities it serves.

The East Central Vermont Telecommunications District (ECVTD), of which ECFiber is the trade name, operates as a Communications Union District (CUD) under Vermont law — one of nine regional CUDs in the state. CUDs, which function under the auspices of the Vermont Department of Public Service, are organizations of two or more towns that join together as a municipal entity to build communication infrastructure. In Vermont, CUDs are the primary tool for expanding broadband access via internet service providers (ISPs) into communities statewide, particularly in underserved rural areas. GWI is a Mainebased ISP that currently operates ECFiber under a contract that expires on Dec. 31. Locally, Barnard, Hartford, Pomfret, Reading, West Windsor, Windsor and Woodstock are among the communities served by ECFiber in the competitive ISP marketplace.

Concurrent with the ongoing legal battle being waged between GWI and representatives of the ECFiber CUD, both sides in the ongoing debate over the future of the regional ISP are also waging war in the court of public opinion, each trying to curry favor with current customers and potential ISP users alike. For its part, GWI has placed print advertisements headlined "Your Internet Service is at Risk" in regional media and has also started up a website,

SaveVTinternet. com, to plead its case to continue running ECFiber beyond the end of the current operating contract on Dec. 31. ECFiber has countered the GWI arguments with talking points of its own, largely through media interviews and a Q&A primer on the lawsuit issues that can be found at ECFiber's website at ecvtd.gov/lawsuit-faq.

Over the past two weeks, the Standard has conversed with ECFiber board chair Flinn and with GWI's president for its northeast division, Tom Cecere, for point-counterpoint discussions of the key arguments put forward by each side in the ongoing conflict over the future of internet service in the ECFiber CUD. (Of note, Cecere formerly served as the CEO of ValleyNet during that ISP's transition to GWI as the operating entity of ECFiber in 2022.)

The following are summations of the key arguments put forward by both Flinn of ECFiber and Cecere of GWI in the public battle between the two ISPs. This report is organized into three subject areas derived from the bullet points in GWI's recent print advertising campaign and on its SaveVTinternet.com website, relative to ECFiber's current board members having set up a new company — called VISPO, the Vermont ISP Operating Company, a not-for-profit entity — to take over operation of the ECFiber fiber optic network effective January 1, 2026.

Claim that VISPO lacks employees, experience, and operations

In its outreach efforts, which have been shaped in collaboration with Leonine Public Affairs, a Montpe-lier based public affairs consulting and lobbying firm, GWI has argued that ECFiber "has no employees aside from a new CEO, no experience, and no operations." In a conversation with the Standard last week, GWI northeast region CEO Cecere expounded on this statement, noting that GWI has employment agreements with most of

the company's Vermont employees that preclude them from accepting positions with VISPO or any other ISP competitor.

Flinn, speaking on behalf of himself and the ECFiber board, took strong exception to GWI's assertion in his own phone conversation with the Standard last week.

“If that’s true, then first of all, I have heard them say that, but I have never seen any proof that that’s true, number one,” Flinn commented, referring to any purported employment agreements that may be in place at GWI. “And number two: Why would they want to prevent people from deciding who they wanted to work for? That sounds pretty heavy-handed — and I’ve heard rumors that they’re bullying employees into signing documents that they don’t fully appreciate. They are really fearful that they’re going to lose a majority of their employees who are going to want to come over to us. That’s because their whole ball game is to take what ECFiber has built and build it into this big national business servicing municipal entities — and I’m sorry, it’s a good idea, but we don’t want to be part of it,” Flinn continued.

“Alex Rozek — the CEO of the Vermont-based broadband investment company Mad Mountain, which recently exercised warrants and now owns GWI — told me in the middle of January that at the end of the day, there probably didn’t need to be 30 people working [for ECFiber] out of Royalton,” Flinn said. “They probably need just six, according to Alex. And I immediately told him that the [ECFiber] governing board would never go for it, because we would rather have 30 people in the building. That’s one of the reasons why we put blood, sweat and tears and uncounted volunteer hours into bringing this business into existence,” Flinn said, referring to ECFiber’s 20year history, which began, he explained, “when local grassroots organizers thought If we don’t do this, a majority

of people in these towns will not have access to modern broadband, maybe ever. And if we do this and it works, we’ll create good jobs. Why would we risk having that go away? It’s not a complicated business — and the only disruption that can happen is if GWI does not comply with its contractual obligation to conform with [ECFiber’s] transition policy and assure a smooth transition,” Flinn argued.

Cecere countered by saying he could speak to the personnel, expertise, and operational issues raised by Flinn from his own personal experience in the ISP and broadband spheres.

“In the critical technical areas, it averages us anywhere from three to six months to hire — and I actually testified about this in federal court — anywhere from three to six months to get a qualified person and then another six months to train them. We have a staff of six people go up in the bucket trucks to connect fiber. We have a senior manager with 30 years of experience. Then you have the people who go into folks’ houses and set them up.

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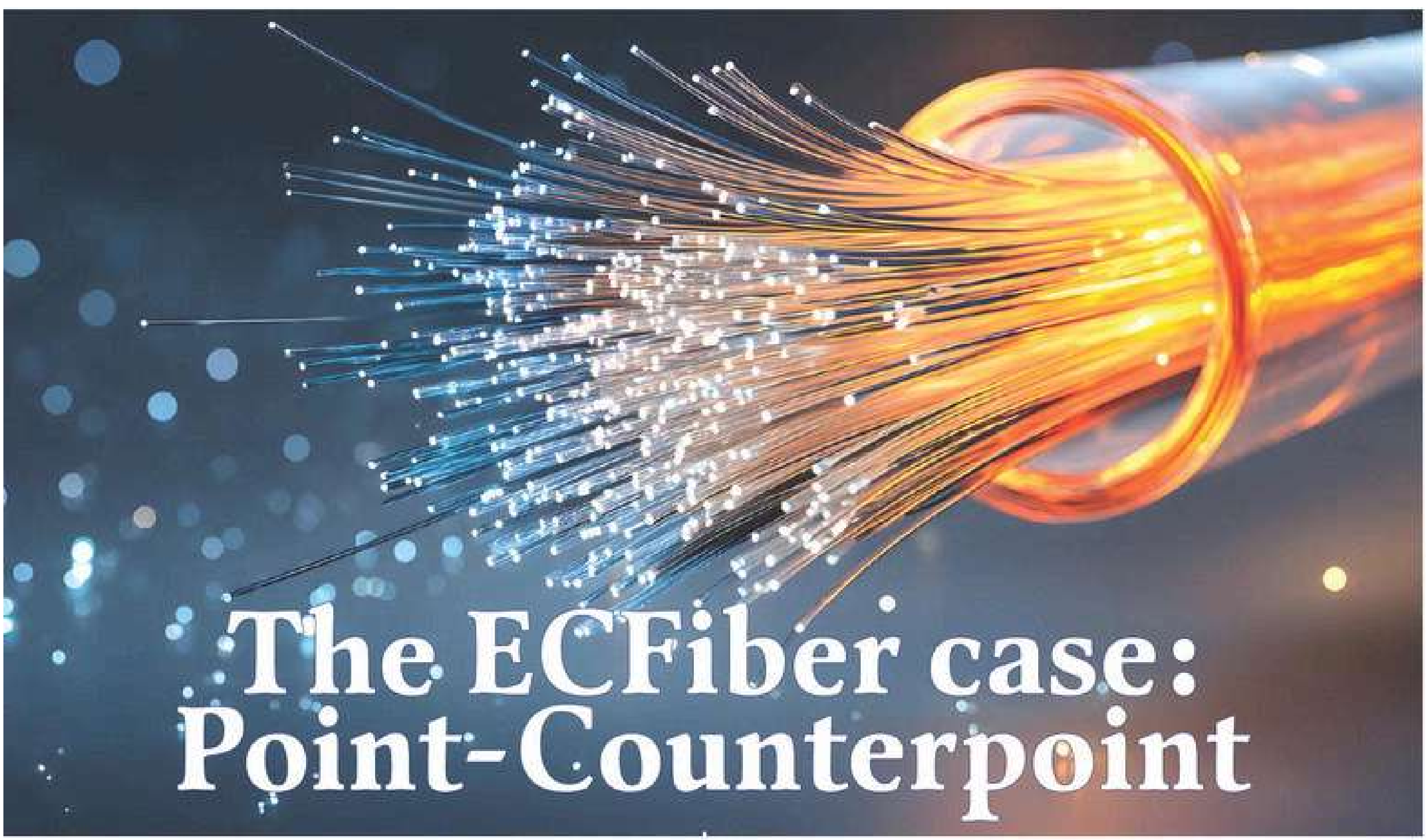

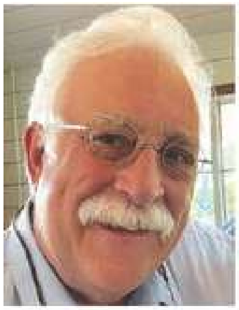

Above left, F.X. Flinn is the board chair of ECFiber. Above right, Tom Cecere is GWI's president for its northeast division.

Photo Provided

ECFIBER CASE

From Page 1D Those are a little easier to get — an average of two or three months to recruit. They also fix things if they break. And then you have people who've been with the organization for a long time and understand the network, doing what we would call second-level tech support. I shudder to think how it would be to try to hire such a person. You basically turn your experienced workers into that because nobody would know the ins and outs of the system," Cecere offered.

"I would say that the only possible way [VISPO can be adequately staffed by Jan. 1] would be if they were thinking of bringing in people from out of state — and the organization has tried that in the past, and it was an utter failure. We actually laughed about it. They brought in a bunch of people from Texas, and by Nov. 1, they were all gone because they said our winters were too cold. They didn't even make it to winter. Trying to pull together a qualified staff in that amount of time between now and Jan. 1? I don't think it can be done, honestly," Cecere noted.

Asked by the Standard if GWI does indeed have signed agreements with some or all of its current Vermont employees that preclude them from seeking employment with VISPO as the new operating entity of ECFiber, Cecere said, "They're not specifically about VISPO: they're related to trade secrets and non-competes with the senior people — the kinds of things that tech companies do all the time. It would be — let's put it this way — all the technical talent. If some other competitor wanted to take them, that would be an issue for us as well.

“One of the things that ECFiber keeps talking about is this notion of an ECFiber staff,” Cecere stated. “But when the phone rings at our office, you think you’re talking to ECFiber staff, but in fact you’ve been talking to, originally, ValleyNet, and now GWI people the whole time. That expertise in building these fiber-to-the-home, rural networks is invaluable. The other two CUDs where we have contracts [in Vermont] — Northwest Fiberworx in the far northwest and the Deerfield Valley/DV Communication Union District in the southeast corner — are dependent on that expertise to build themselves up from nothing to 10,000 or so customers over the next few years. So it’s a really valuable experience that people have gotten through employment with our company — and we think that is important for people to know.”

Allegation that VISPO lacks transparency

GWI and Leonine, the ISP firm’s public affairs consultant, have contended that VISPO was “created behind closed doors and has no publicly available budget.” Flinn responded to that assertion forcefully in his discussion with the Standard.

“It’s not [about] open meeting law — it’s public record law,” the ECFiber board chair said. “The Vermont communication union district law says that the business records of a [CUD] are presumptively exempt from public record law,” Flinn stated. “And the best way to draw a clean, bright line is to make sure all of the records that are properly business records are with the operating company. That’s why whenever people in the past have said that as a municipal network, we should talk about how the network is designed, we say, ‘No, those are business records. We’re not going to release that so that you know where to go and subvert the network, cut wires or something like that.’” Flinn also asserted that VISPO is not beholden to release salary and other personnel information publicly. “We’re not going to publish what people get paid, because they’re getting paid by a company, not by a municipality. Because if everybody who comes and works for the district, if their salaries would be public the same way that village police salaries are public, that would mean that it would be very easy for people to be picked off [by competitors],” he noted. “You’ve got to understand that ECFiber is something of a unicorn. We are a municipality that owns a business that competes in the open market, is not a regulated utility, does not have a geographic monopoly, does not have any kind of monopoly, has no ability to compel the citizens in this area to do anything, has no ability to go back to the member towns for recourse, and it has no taxing power,” Flinn contended.

“There are very good reasons for all of this: let Mac Mountain and GWI publish [their budgets] so that we can see what happens when an operator publishes all of that information for the public to see,” the ECFiber spokesman commented.

Cecere says that the scenario spelled out by Flinn is “completely different from the way ECFiber has acted in the past. I have spent four years attending their meetings,” Cecere averred. “We have public meetings about budget, and the public’s allowed to comment on it. ECFiber is a special-purpose municipality under Vermont law. VISPO is not that — VISPO is a nonprofit corporation. And to my mind, it was created to avoid transparency. And it’s probably not a coincidence that many of the people who were involved in creating it are now part of that organization.”

Asked if GWI and Mad Mountain make public the budgets specifically related to the municipal ISPs that they operate, Cecere said, “It’s a good example: essentially, ECFiber’s operating budget is public. And we are the operator — so technically, the answer would be yes. But we are not a municipality, so essentially to create a separate entity in order to avoid public scrutiny is something that I think it’s important for the people in the [ECFiber CUD] to know.”

Assertion that S&P Global “downgraded” ECFiber’s credit outlook

In its ads in local media and on the SaveVTinternet website, GWI claims that the international financial intelligence and analytics firm S&P Global “recently downgraded ECFiber’s credit outlook because of this risky transition” set to take effect on Jan. 1.

“That is absolutely false,” ECFiber leader Flinn responded. “That is not what [S&P Global] did. They didn’t downgrade the rating — it is still BB. The rating is still one notch below investment grade. What they did was change the outlook — and the outlook is that there’s basically a one-inthree chance that they’ll downgrade the bonds in the next one to two years — that’s all.”

Moreover, Flinn asserted, “The rating team at S&P Global was understanding and supportive of the decisions that the district made to not continue with GWI as the operator. They didn’t tell us, ‘Don’t do this.’ They were more like, ‘It makes sense what you're doing.' And we told them we're standing up a nonprofit, a public benefit corporation under Section 115 of the IRS regulations, the same way cities all over the country do when they own their own like electric utility or what have you: you don't burden a city council with also being the board of the utility. It's a very common thing — we operated that way, in effect, with ValleyNet. And we don't expect that we're going to have trouble operating in that way by going back to that model with VISPO."

Flinn went on to characterize S&P as "just a ratings agency," downplaying the international financial analysis firm's impact on smaller business entities such as ECFiber. "They make their money by selling access to their ratings to investors. They're not some public judge of whether a business is good or bad or following the rules or anything like that," Flinn claimed. "They're strictly about asking what is the risk of investing in this particular vehicle? What would happen if we had no bond rating? Well, you know what?" the ECFiber representative asked rhetorically. "We had no bond rating when we issued bonds in 2016, 2017, 2018, 2019, 2020 — we didn't get a bond rating until we issued bonds in 2023, so if we had no rating, it wouldn't make a damn bit of difference. We would still be able to go to the bond market and borrow money — we'd just have to pay a higher interest rate."

GWI's Cecere suggested that Flinn was in effect splitting hairs over the issue of whether S&P Global had downgraded ECFiber's credit status. "What this means is that it hasn't been downgraded because they haven't gone back out for any bonds since we worked very hard [to get an S&P rating]. I was part of the team that worked very hard to convince S&P to rate them in the first place — and it was

a major victory," Cecere offered. "It's not a joke — I know their financials better than they do. I've been a CFO three times, and we do their books. We're the operator. They don't have any operator. We have the finance people, so we had to work very hard with the people on the [ECFiber] board and the finance committee to get that rating. But the rating goes with a specific offering," Cecere noted. "So when the next offering memorandum comes out, then S&P is going to look at that and view this changeover negatively, which means higher interest rates. That's what it means. This notion about private borrowers or private lenders? That's all that they ever get money from — the buyers of these bonds are profit-making entities."

In addition, Cecere said, GWI is concerned about the present financial condition of ECFiber and about the impact that the potential transition of the present operating contract to VISPO could have on the other eight CUDs currently operating in Vermont.

"On a broader level, the ECFiber district is, I'm going to say, 90% complete in terms of their construction and 80% in terms of capital expenditure, which means that they still have to borrow plenty more money," Cecere said. "But the other, broader impact of this is on the other CUDs that are just getting going, because they've been able to get kind of a first-stage booster rocket from the federal ARPA (American Rescue Plan Act). And they were hoping for federal BEAD (Broadband Equity Access and Deployment Program) project grants, which doesn't look good right now, and so they'll be out in the bond market soon. Up until now, [the financing model that was previously in place] was being viewed positively by S&P; ECFiber was the only company that S&P rated, and now they've got a question mark," the GWI executive stated.

"We trust these companies, these municipalities, to do the right thing and to be consistent with what they say in the [bond] offering memorandum, where EC fiber did say that they would only use an experienced operator and would continue to do so. So it's not just the ECFiber question is our point: it's a much broader question for the other CUDs in the state — both the ones we're serving and the other seven that have to go out to the credit markets."