



STATE OF CONNECTICUT NEWS RELEASE

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Consumer Counsel Elin Swanson Katz, Seeking to Promote Broadband Access for All, Initiates Lawsuit Against PURA Decision

NEW BRITAIN, Conn. (June 20, 2018) Consumer Counsel Elin Swanson Katz announces that the Office of Consumer Counsel (OCC), including the Office of State Broadband within OCC, has today filed an [administrative appeal](#) in the Connecticut Superior Court in New Britain challenging a recent decision by the Public Utilities Regulatory Authority (PURA) that limited the rights of municipalities to develop broadband (a/k/a high-speed internet) services for their residents and businesses. PURA issued the [Decision on May 9, 2018](#) in its Docket No. 17-09-37, *Petition of the Communication Workers of America, CTIA, Frontier Communications of Connecticut and the New England Cable and Telecommunications Association for a Declaratory Ruling regarding Permissible Use of the Municipal Gain by Connecticut Municipalities*.

At issue is the permitted use by municipalities of a space on each utility pole or conduit that is legally reserved for municipal or other public use, a space known as the “municipal gain.” While this statutory authority allowing municipalities to have a free attachment place on utility poles was first granted by the state General Assembly in 1905, the Connecticut Legislature revised the statute in 2013 so that it could be used by the municipality or other public user “for any purpose.”

Despite the broad statutory language that would allow municipalities to use the municipal gain “for any purpose,” and written and oral arguments submitted to PURA arguing that the municipal gain statutory authority includes the delivery of broadband services to the public, including through commercial arrangements with third parties, PURA ruled in its Decision that municipalities are not permitted to use the municipal gain for purposes of delivering broadband services to the public, including through commercial arrangements with third parties. If not overturned, this PURA ruling would cancel the plans of numerous municipalities that are seeking to use the municipal gain to ensure that their citizens have affordable and reliable broadband access, which access is sorely lacking in numerous communities.

Various incumbent internet service providers, including Frontier and the cable television companies operating in this state, sought this PURA ruling to prevent broadband competition from municipalities. While these companies have failed to provide ubiquitous, affordable access to broadband in across Connecticut, they also seek to prevent the municipalities from supporting their residents, businesses (small and large), and community anchor institutions by encouraging development of ubiquitous broadband to all addresses in towns. The OCC has encouraged many towns to develop public-private partnership arrangements with third parties to use the municipal gain to resolve these “broadband deserts.”

“Despite being one of the most digitally connected states in the country, we still have tens of thousands of citizens who are unserved or underserved by the existing broadband market,” Consumer Counsel Katz said. “These members of our community cannot fully participate in the digital economy. We have children in low-income urban communities who resort to doing their homework in fast food restaurants because they lack access to affordable broadband services in their home. We have young people leaving our rural areas in droves because they don’t want to live in an area that doesn’t have decent broadband available. We see small businesses struggle and falter because they can’t get the affordable high-speed access to the internet that is essential for commerce today. In so many different ways, underserved and unserved areas of our state suffer because a lack of affordable broadband services limits access to information about education, public safety, health, employment, government, recreational and tourism opportunities, and many other key types of information valuable to citizens and businesses.” Consumer Counsel Katz noted two studies commissioned by the OCC which documented this situation: [*Assessment of the Broadband “Homework Gap in Hartford*](#) and [*A Brief Overview of Broadband Deficiencies in Connecticut*](#).

Unfortunately, the Decision relied on the arguments of the incumbent internet service providers, who have failed to provide ubiquitous broadband access, in holding that municipally-sponsored broadband using the municipal gain would lead to unfair competition that harms the existing providers. In doing so, the Decision illegally nullified the 2013 statutory amendment that stated that municipalities could use the municipal gain “for any purpose.” In essence, the Decision appears to substitute its own economic theory, that public entities like municipalities should not be involved in broadband development, for the legislature’s 2013 statutory amendment that opened the door to municipal broadband. PURA also illegally limited the rights of municipalities to meet the educational, public safety, and health needs of their citizens, including through commercial arrangements with third parties.

“If these broadband challenges exist in Connecticut, they exist everywhere in our country. This is a national problem,” Consumer Counsel Katz added. “Fortunately, we have dozens and dozens of municipalities in our state that are interested in joining a national movement to create public-private partnerships to build community broadband networks that can provide affordable, ultra-high-speed broadband services to every citizen. These municipal efforts are of course opposed by major internet service providers, who don’t want the competition. They would rather keep their monopolistic grip on the internet, and be able to charge exorbitant prices for what is often inadequate speed and poor service. Fortunately, the Connecticut legislature gave municipalities a powerful tool, the municipal gain, as a means to level the playing field and facilitate the development of municipal networks as an option for consumers. It is use of this tool that PURA’s decision eliminates, as the decision says that it cannot be used for municipal networks. However, both my office and our municipalities are prepared to fight for our consumers, and we will not give up if we have to fight this all the way to the Supreme Court.”

Katz noted that the Connecticut Conference of Municipalities has already filed its own suit with the Superior Court in New Britain challenging the same PURA decision. OCC expects that the two suits and any others that may be filed by to be consolidated into a single proceeding. A ruling would not be expected until late 2018 or 2019.

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The Office of Consumer Counsel (OCC) is the State of Connecticut’s advocate for consumers on issues relating to electricity, natural gas, water, and telecommunications. For more information, visit www.ct.gov/occ.