



## STATE OF CONNECTICUT

# NEWS RELEASE

Consumer Counsel Elin Swanson Katz

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### **THE BATTLE FOR BETTER BROADBAND ACCESS CONTINUES IN SUPERIOR COURT, AN ISSUE WHICH CONSUMER COUNSEL KATZ CALLS ESSENTIAL FOR ECONOMIC PROSPERITY**

**NEW BRITAIN, Conn. (November 1, 2018)** Consumer Counsel Elin Swanson Katz announced that the Office of Consumer Counsel (OCC) yesterday filed its Brief in the lawsuit challenging a ruling by the Public Utilities Regulatory Authority (PURA) that limits the ability of towns and cities to provide much needed broadband internet services to their residents and businesses. This represents a continuation of OCC's considerable effort to ensure that Connecticut citizens and businesses will enjoy the high-speed internet services essential to modern life for civic engagement, emergency messaging, commercial activity and electronic filing, education, health care information, recreation, and myriad other important uses.

"We will fight for consumers to have greater access and more options for affordable, high-speed broadband internet services, all the way to the Supreme Court if necessary," Consumer Counsel Katz said. "Every citizen in the state should have not just one provider, but ideally multiple providers, so there is competition on price, speed, and service. Having access to the internet is essential for economy prosperity for both our citizens and our state. I applaud municipal officials who want to take actions to make sure every member of their community has access."

In an administrative docket brought by telephone and cable operators, PURA ruled on May 9, 2018 (Docket No. 17-09-37) that towns and cities cannot use their statutory right (since 1905) to a designated space on the state's 900,000 utility poles, referred to as the "Municipal Gain," to provide broadband internet services to the general public. Despite the fact that a 2013 General Assembly statutory amendment clarified that towns and other public users can use the Municipal Gain "for any purpose," PURA nevertheless ruled that fiber wiring installed in the municipal gain can only be used for internal municipal communications, such as communication between schools, and cannot be used to provide broadband internet services to the general public or local businesses. OCC, the Connecticut Conference of Municipalities, the Town of Sharon, the City of New Haven, the City of West Hartford, and the City of Manchester appealed PURA's ruling to the Superior Court in June, claiming profound legal errors. OCC and the other plaintiffs filed lengthy briefs yesterday stating their legal positions.

Among other arguments, OCC and the other plaintiffs stressed that PURA does not have the authority to limit or “creatively interpret” the language of the relevant law, which expressly allows the use of the Municipal Gain “for any purpose.” PURA is an administrative agency and must follow and implement the law as written. Moreover, PURA’s ruling does not sufficiently respect the broad legal powers of municipalities to act on behalf of their constituents under Connecticut’s Home Rule Act, which provides residents with a greater voice over local issues.

PURA expressed concern in the ruling about the potential impact on broadband competition if the municipalities use the Municipal Gain space on the poles, but the Authority failed to take actual evidence on that subject. If PURA had taken evidence, OCC and the municipalities would have demonstrated that many citizens and businesses in the State either have no broadband internet access at all or that they often have a choice of at most two providers, the local cable company and Frontier. OCC therefore maintains that it is essential that we add to the set of broadband providers by allowing municipalities to advance broadband offerings to the public, instead of barring the door. The history of electric service from a century ago proves that municipalities lead when the business market fails to deliver critical services, today being affordable broadband internet access. Because Frontier and the New England Cable Television Association (“NECTA”) wish to maintain their central positions in Connecticut’s broadband market, they have intervened in the matter as defendants to try to defend PURA’s ruling and stave off additional competition.

“You’d be surprised at the number of people in our state who don’t have access to *any* broadband internet service,” Consumer Counsel Katz said. She noted that the Town of Sharon estimated in their legal brief that approximately 10%-15% of the homes do not have access to broadband internet services, despite repeated attempts to get existing providers to extend service.

“That is simply unacceptable,” she added. “Consumers need, want, and deserve internet affordable access. Connecticut is one of the most connected states in the country, and yet we face this issue, which means it’s a problem throughout the country. We need to consider every avenue and get creative in finding solutions. Municipal action has proven very effective in many other states. We need to enable it here in Connecticut.”

PURA’s ruling also cites to its alleged responsibilities to protect telecommunications competition under federal and state laws. However, the Federal Communications Commission confirmed earlier this year that broadband internet services are actually “information services” for regulatory purposes, and not “telecommunications services” as the previous administration had declared. PURA is therefore claiming jurisdiction and responsibility for broadband activities and competition over which it has no legal authority to rule.

The defendants, including PURA, Frontier, and NECTA, must file their responsive briefs by December 7, 2018. OCC and the other plaintiffs will then file a reply brief by December 21, 2018. Oral argument will then occur at a date to be determined. OCC would expect a ruling from the Superior Court in the spring of 2019.

Consumer Counsel Katz thanked OCC Attorney Joseph Rosenthal and State Broadband Coordinator William Vallee for their work on the docket.

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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](http://www.ct.gov/occ).*