



February 6, 2024

Representative Emilie Kornheiser, Chair
House Committee on Ways and Means
Vermont House of Representatives
115 State St
Montpelier, VT 05633

Representative William Canfield, Chair
House Committee on Ways and Means
Vermont House of Representatives
115 State St
Montpelier, VT 05633

RE: Opposition to H. 657

Chair Kornheiser and Vice Chair Canfield,

On behalf of CTIA®, the trade association for the wireless communications industry, I am writing in opposition to the provision in H. 657 that would assess a fee on each pole attachment to fund a newly created “Community Media Public Benefit Fund.” CTIA also opposes various other provisions in H. 657 as described by Scott Mackey in testimony before the committee.

At a time of exploding consumer demand for wireless services, our industry is working hard to deploy and upgrade infrastructure and create jobs and economic growth for Vermont communities. The wireless industry contributes nearly \$500 million to the state’s GDP annually and employs approximately 7,000 residents. As more devices connect to wireless networks and future innovations in telehealth, smart factories and distance learning need reliable connections, policies must keep the door open for wireless investment in Vermont. Unfortunately, this bill would take Vermont in the wrong direction and runs afoul of federal law.

As you know, H. 657 would provide support for access management organizations (AMOs) in part by charging an annual fee to pole attachers, including “wireless communications providers,” that have attached antennas or other equipment to utility poles in state and local rights of way. In doing so, this legislation directly conflicts with Sections 253(a) and 332(c)(7) of the federal Communications Act.¹ In a 2018 Order, the Federal Communications Commission (FCC) ruled that under these provisions, fees charged by states and localities with respect to small wireless facilities must be cost-based; that is, they must be “a statutory reasonable approximation of the state or local government’s costs” that are “specifically related to and caused by the deployment.”² Fees cannot be imposed for the purpose of raising revenues. The United States Court of Appeals for the Ninth Circuit affirmed the FCC’s ruling that

¹ 47 U.S.C. §§ 253(a), 332(c)(7).

² *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9012 (2018) (“Order”).



fees must be based on costs in managing wireless facilities that are deployed in rights-of-way, not to raise revenues.³

Given these clear rules governing small wireless facilities, this legislation fails to meet this federal standard because they are expressly intended to raise revenues, not to reimburse Vermont or localities for their costs in managing the deployment of wireless facilities. This is readily apparent from the bill's stated purpose: to create "an annual utility pole attachment charge on communications service providers" to finance the new Community Media Public Benefit Fund. (Sec. 7601)

Given the exploding demand for wireless services, state tax and fee policies should facilitate and encourage capital investment and the deployment of wireless infrastructure to benefit the state's economy by ensuring Vermonters have access to wireless services. The fees on wireless facilities included in this legislation raise serious legal and policy issues that may only inhibit the deployment of expanded service in Vermont. For these reasons, we oppose the provision in H. 657 that would assess a fee on each pole attachment to fund a newly created "Community Media Public Benefit Fund."

Sincerely,

Jeremy Crandall
Assistant Vice President
State Legislative Affairs

³ *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct 2855 (2021).