LEONINE PUBLIC AFFAIRS
One Blanchard Court, Suite 101, Montpelier, VT 05602-3843
802.229.4900 | www.leoninepublicaffairs.com

Testimony of Scott Mackey
on H.657
House Committee on Ways and Means

January 25, 2024

Chair Kornheiser and committee members, thank you for the opportunity to testify on the tax policy issues included in H.657. I am the managing partner at Leonine Public Affairs here in Montpelier. I work with a coalition of wireless providers on state tax issues across the country. Today I appear on behalf of CTIA-the Wireless Association. CTIA supports state and local tax policies that do not impose excessive and discriminatory taxes on wireless consumers or wireless service providers.

In that regard, I would like to address three aspects of H.657:

1) The expansion of the sales and use tax to software accessed remotely

2) Changes to the state Universal Service Fund ("USF") Charge

3) Expansion of the state telephone property tax to wireless providers

<u>Expansion of Sales and Use Tax to Software Accessed Remotely ("Cloud Tax") (Sections 1-4)</u>

The wireless industry takes no position on whether states should tax remotely accessed software, provided that the states do not impose excessive or discriminatory taxes on such services or impose taxes on such software sold by wireless providers but not other sellers. Since H.657 would impose the tax under the general sales and use tax that applies to other goods and services, and apply the tax to all sellers, the tax is not excessive or discriminatory in nature.

However, we believe that sales and use taxes should be imposed on the final consumption of goods or services and should not be imposed on business inputs. Taxes on business inputs result in the pyramiding of taxes (i.e., a tax on a tax) by imposing the tax on business inputs and again on the final sale of goods or services to the consumer. We respectfully recommend that if the committee chooses to enact the sales and use tax expansion that the bill include an

exemption for "business to business" sales of remotely accessed software that is incorporated into a product sold at retail.

Changes to the State Universal Service Fund Charge (Sections 5-9)

H.657 would change the basis for the imposition of the state USF charge from a percentage of retail voice telecommunications services to a flat amount per access line for postpaid wireless and other telecommunications services. In previous testimony in 2022 and 2023, we outlined several key issues for the Committee to consider if it decides to move forward with this change. I've included these issues below and a discussion of how they were addressed in H.657:

- *Definition of Access Line* – It is critical that the definition of access lines be limited to voice telephony lines capable of dialing 911. Otherwise, broadband access lines, machine to machine wireless lines, and other lines not capable of dialing 911 could be subject to the fee**. H.657 has incorporated changes that address this concern.**

- *Impact on low-and moderate-income families with family share wireless plans* – As the administration pointed out in the January 2023 memo, a flat per month charge would make the charge more regressive. In particular, it would shift more of the burden to families with multiple lines because of how wireless pricing plans are structured. Typically, the first wireless access line is priced higher than additional lines added to the same plan. With a percentage imposition, the fees on these lower-priced additional lines are proportionately lower. For example, a four-line family share plan where the voice portion of the service costs $20 for the first line and $10 for each additional line would pay $0.48 cents for the first line and $0.24 for each additional line for a total of $1.20. Under a flat per line charge of $0.60 per month, the charge would increase to $2.40 per month. Using that example, the effective rate of the fee is 2.4% while under the proposal the effective rate would be 4.8%. **H.657 would increase the overall burden on wireless consumers, especially those with family share plans. However, the lifeline exemption included in the bill would at least mitigate the impact on the poorest Vermonters.**

- *Shift from wireline to wireless and from businesses to consumers* – Businesses spend more per line on telecommunications service than consumers, and businesses generally spend more on wireline services than wireless services. Therefore, a shift to a flat per-line charge would shift more of the burden for the USF from businesses to consumers. This would be especially true if the legislature caps the number of per-line charges at a single business location. **H.657 would shift a significant portion of the overall USF burden to wireless consumers, but it does not include a line cap that would exacerbate this shift.**

- *Prepaid wireless* – If the legislature decides to shift to a per-line charge, we recommend that the charge on prepaid wireless service be kept on a percentage basis. Otherwise,

retailers throughout Vermont that are collecting the charge at the point of sale would have to re-program their systems to change the collection methodology. The current percentage collection basis aligns with the state sales tax that is also collected at the point of sale by retailers. **H.657 retains the current percentage-based imposition on prepaid, thereby addressing this concern.**

- *Administrative issues* – Most other states already impose the 911 fee/charge on a per line basis so companies can administer a flat fee without difficulty. However, they need a minimum of 90 days to change their billing systems. **H.657 addresses this issue with a 1/1/2025 effective date.**

- *Rate changes* – Rates should be set by the Legislature and not by the PUC or another administrative agency. This provides more direct accountability and tends to discourage frequent rate changes that add to compliance costs. **H.657 retains the authority of the legislature to set the rate in statute.**

- *988 Funding* – H.657 provides that USF funding can be used to support the operational and capital costs of the 988 suicide and crisis lifeline centers. This provision is consistent with the wireless industry policy principles that fees on consumers should be limited to equipment and personnel costs of staffing 988 call centers. The bill also funds the 988 program without a separate line item on consumer bills, which reduces the administrative burden associated with funding the 988 program. **H.657 is consistent with the wireless industry principles for 988 funding.**

<u>Expanding the State Telephone Property Tax to Wireless Providers (Sections 10 – 10a)</u>

The wireless industry is opposed to provisions in the bill that would shift the taxation of wireless personal property from local municipalities to the state Telephone Property Tax. The Telephone Property Tax is an outdated tax that is a relic of the regulated monopoly era that has been gone for nearly 40 years. It is not appropriate or fair to expand a tax intended to tax monopoly telephone companies to the highly competitive wireless industry.

Under current law (32 VSA 3848-3849), the Legislature grants municipalities the authority to tax or exempt business personal property. Currently, about one-fifth of Vermont cities and towns have elected to tax business personal property and the rest have elected to exempt such property. The list of municipalities that currently tax business personal property includes some of the largest in Vermont, including Barre Town, Brattleboro, Burlington, Montpelier, Rutland, and St. Albans City and Town.

Like all businesses, wireless providers pay property taxes on any real property that they own. In the municipalities that have elected to tax business personal property, wireless providers also pay the tax on machinery and equipment. This generally includes the computer and other equipment at the cell site locations, cable used to connect those sites to the communications network backbone, and machinery and equipment at switching sites.

The personal property of wireless companies in municipalities that choose to tax business personal property is valued and assessed using the same depreciation schedules that apply to all other taxable business personal property. For example, the City of Burlington has a schedule that uses a common method for valuing business personal property – Replacement Cost New Less Deprecation (RCNLD). Under RCNLD, the starting point for valuing equipment is the cost of that equipment "new" minus a depreciation schedule that varies from 5 years for computer equipment to 15 years for long-lasting equipment.

The wireless industry does not have a concern about paying personal property taxes in municipalities that have elected to tax the property of all businesses. However, under H.657, wireless companies would be treated differently than other competitive businesses as they would be assessed a personal property tax in municipalities that have elected to exempt business personal property.

Historically, states have used so-called "central assessment" to value the property of public utilities like telephone, gas, and electric companies, and also railroads, that have infrastructure that passes through many jurisdictions over rights-of-way. For example, if a railroad passes through a municipality, it is very difficult for local assessors to value a narrow strip of land. Under central assessment, the state sets the value for the entire enterprise and then apportions the values to the jurisdictions proportionally.

Unlike railroads, wireless companies do not have the same type of interconnected networks that necessitate central assessment. It is very straightforward for local assessors to value the property of each discrete wireless cell site and switching site using the same depreciation schedules that apply to other business personal property.

Some have suggested that wireless property should be subject to the Telephone Property Tax to "level the playing field" with other providers of communications services. We respectfully disagree and suggest that such a change would make the playing field less level. There are significant differences between wireless and wireline providers and how they provide their communications services, which does not provide for an easy apples-to-apples comparison. For example, in many states, wireline companies pay local government right-of-way fees for the right to use the public right of way to deploy their network to provide service in a jurisdiction. Wireless companies do not pay these local charges and instead provide wireless service utilizing wireless spectrum for which the wireless providers have paid over $200 billion since 1994. In addition, wireless companies typically pay public or private landowners fair market rents to locate cell sites.

To summarize, the wireless industry does not support the expansion of the Telephone Property Tax to wireless personal property. It would not "level the playing field" and would instead increase the tax burden by applying a monopoly era tax on companies in a highly competitive industry.

Chair Kornheiser and Committee members, thank you for the opportunity to share our views on H.657. We look forward to working with the Committee as the bill moves through the House.