Telephone Association of Vermont

February 15, 2024

Rep. Emilie Kornheiser, Chair
& Members of the House Committee on Ways and Means
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Re: H.657 (Modernization of Vermont's communications taxes and fees) — Comments of the Telephone Association of Vermont

Dear Chair Kornheiser & Members of the House Ways & Means Committee:

The member companies of the **Telephone Association of Vermont oppose H.657 in its present form** and propose several amendments that would make the legislation more acceptable to the TAV members.

1. Overview

H.657 attempts to advance several worthy policies, from new funding for the Vermont 988 Suicide and Crisis Lifeline Centers, to stable funding for so-called "PEG Access" programming provided by cable-television systems,[1] to additional funding for Communications Union Districts ("CUDs") overseen by the Vermont Community Broadband Board ("VCBB"). The TAV companies understand the State's desire to find new revenue sources to advance these goals. However, the tax mechanisms that H.657 uses run afoul of other limitations in law and policy.

Specifically, in its present form, H.657:

- Imposes new taxes on telecommunications services in ways that will make broadband less affordable for Vermonters;
- Deprives broadband providers of revenues needed to build out broadband networks in Vermont; and
- Violates principles of non-discrimination and competitive neutrality by disadvantaging rural providers in favor of urban providers and disadvantaging certain voice services based on the technology they use.

[1] Under the federal Cable Act, cable television systems are obligated to charge a franchise fee of no more than 5% on all cable-television services and to use these revenues to provide public, educational and government ("PEG") programming in each community they service. *See* 47 U.S.C. § 542(b).

2. TAV: Who We Are

The Telephone Association of Vermont (TAV) is comprised of the following eight (8) rural Vermont telephone companies:

Franklin Telephone Company, Inc.
Ludlow Telephone Company d/b/a TDS Telecom
Northfield Telephone Company d/b/a TDS Telecom
Perkinsville Telephone Company, Inc. d/b/a TDS Telecom
Shoreham Telephone LLC d/b/a GoNetspeed
Topsham Telephone Company, Inc.
Vermont Telephone Company, Inc. d/b/a VTel
Waitsfield-Champlain Telephone Co., Inc. d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom

The TAV member companies serve primarily residential customers in mostly rural parts of Vermont, including in many communities that have never been served by a cable television provider. The TAV companies are primary carriers of E911 traffic to local and state first responders in Vermont. As carriers-of-last-resort ("COLRs") in their rural service areas, the TAV companies are designated under federal law as Eligible Telecommunications Carriers ("ETCs") and receive support from the Federal Universal Service Fund (*see* 47 U.S.C. § 214(e)). The TAV companies are also designated as Vermont Eligible Telecommunications Carriers ("VETCs") under Vermont law and are entitled to receive support from the Vermont Universal Service Fund ("VUSF") (*see* 30 V.S.A. § § 7515(b)). As COLRs, TAV members must, among other requirements, maintain landline voice service availability and E911 capability to every location in their rural service areas.

In recognition of the significant regulatory oversight and duties that the TAV companies bear as COLRs under federal and state law, the Vermont General Assembly nearly 20 years ago granted the TAV companies a unique form of alternative regulation under 30 V.S.A. § 227d.

The TAV member companies believe that the adverse effects of H.657 would be mitigated if its provisions included carve-outs based on the TAV companies' status as federal and state ETCs and/or their unique regulatory status under 30 V.S.A. § 227d. These proposed exceptions are discussed further below.

3. TAV Concerns With H.657: Issues of Affordability and Discrimination

H.657 would entirely revamp the way that communications providers and services are currently taxed in Vermont. Currently, in lieu of business income taxes or taxes on their real and personal property, telephone companies in Vermont are taxed at an annual rate of 2.37% of the *net book value* ("NBV") of their regulated Vermont assets. *See* 32 V.S.A. § 8521. As an alternative, under 32 V.S.A. § 8522, smaller carriers can elect to pay a tax calculated as a percentage of their gross Vermont operating revenues.

H.657 would repeal 32 V.S.A. §§ 8521 and 8522 and in their place would make telephone companies and services subject to a variety of taxes that have not previously been applied to communications facilities. These taxes include certain taxes on communications property, including:

- **Real property tax** (Sections 9-11 & 14)
- **Personal property tax** (Sections 12-13)
- **State-owned right-of-way tax** (Section 15)

H.657, in Section 4, would also replace the current 2.4% Vermont Universal Service Fund ("VUSF") surcharge with **a flat fee of $0.72 per retail voice line in service**. The purposes for which VUSF funds can be used would be expanded to include support for the Vermont 988 Suicide and Crisis Lifeline Centers. (H.657, Sections 6-7.)

Finally, H.657, in Sections 16 and 17, would impose **a new pole-attachment charge of $15.00 per attachment per pole per year** on all communications and broadband facilities that are attached to utility poles. Revenues from the new pole-attachment charge would be distributed to the Vermont Access Network to support a newly-established Vermont Community Media Public Benefit Fund that would fund PEG programming on Vermont cable-TV networks statewide.

a. Property Taxes: New Taxes + New Costs ≠ More Affordable Service

By replacing the current telecom tax with real and personal property taxes, H.657 would require the TAV companies and other telecommunications providers to establish the "fair market value" ("FMV") of their assets, rather than using "net book value," which has historically been the basis for calculating telecom taxes in Vermont.

If H.657 is adopted, the TAV member companies will need to undertake costly and time-consuming valuation studies to establish the FMV of their telephone assets. Without reliable data, the TAV member companies are not presently able to determine how the proposed property taxes will affect their tax bills. But any tax increase, combined with the costs of the required valuation studies, will deprive the TAV companies of revenues they would otherwise invest in expanding and enhancing their broadband networks in Vermont.

Levying new state taxes and costs on Vermont communications services makes those services less affordable rather than more affordable, in contravention of State and federal policy.

b. Per-Line VUSF Surcharge: Discriminatory and Unfair

Currently, Vermont law levies a 2.4% VUSF surcharge on "retail telecommunications service." *See* 30 V.S.A. § 7523(a)-(b). The current percentage surcharge applies to all telecommunications services regardless of platform or technology.

H.657 would replace the current percentage surcharge with a $0.70 surcharge "for each retail access line in service." (H.675, Section 4.) But because of the way H.657 defines "access line,"

the new per-line charge would apply to voice-only lines and voice lines that are bundled with broadband service, but would *not* apply to broadband-only lines.

Adoption of H.567 would thus create a discriminatory tax regime whose impacts fall most heavily on voice lines rather than broadband-only lines. Vermont regulations, including its tax structure, should at all times be competitively neutral. The State should not impose new taxes on any services in a discriminatory manner that favors one technology or platform over another.

c. New Pole Attachment Charges: Unfair to Rural Vermonters, Telecom Customers

H.657 would levy a new pole-attachment charge of $15.00 for each copper or fiber line attached to a utility pole. Revenues from the pole-attachment surcharge would be earmarked to support a new Community Media Public Benefit Fund (the "Fund") that would help fund PEG programming delivered by cable-television systems across Vermont.

Up until now, PEG channels have been funded exclusively through franchise fees that cable providers are required under federal law to charge to their subscribers. Revenue from cable franchise fees funds access management organizations (AMOs), which contract with cable providers to produce local PEG programming.

H.657 recognizes that cable franchise fees have declined—and as a result, the financial support available to AMOs to produce PEG programming has also declined—as cable-TV subscribers have "cut the cord" and moved away from traditional cable-TV services in favor of Internet video streaming services, which are not subject to federal cable regulations.

The TAV members understand the funding dilemma that "cord-cutting" has created for AMOs and PEG channels. But using state taxes to expand the funding responsibility beyond cable providers—who are obligated under federal law to provide PEG funding—to include communications companies and their ratepayers raises significant legal and regulatory concerns.

More specifically, TAV's concerns are as follows:

- **Federal pre-emption**. The proposed attachment fees on communications providers impedes the ability of those providers to offer telecommunications services, in violation of the federal Telecommunications Act (47 U.S.C. § 253(a)). In addition, imposing state fees on communications facilities and services represents unlawful state regulation of Internet services in violation of federal law, as announced in the Federal Communications Commission's *Restoring Internet Freedom* Order (Jan. 14, 2018).

- **Discriminatory, anti-competitive effect**. The proposed attachment fees are discriminatory and are not competitively neutral. Take the example of TAV member Franklin Telephone Company. A telephone company like Franklin Telephone attaches up to three (3) separate lines on each pole in its territory and would be required to pay up to $45 per pole. Meanwhile, a cable Internet company, which overlashes a fiber-optic line onto its existing coaxial cable,

would only pay $15 per pole. In addition, cable providers that offer communications services may offset their attachment fees with the franchise fees they already pay to AMOS, while a telephone company like Franklin, which does not offer cable television service, is not entitled to this offsetting benefit. Competitive neutrality concerns are also raised by the proposed exemption for publicly owned communications facilities, as noted in the NECTA comments.

- **Unfair rural-to-urban subsidy**. The proposed attachment fees unfairly target rural communications companies and their ratepayers to resolve a funding dilemma arising from changes in the cable-television industry. Cable companies have historically served more densely populated communities while leaving rural communities unserved. For example, Franklin Telephone has never had a cable provider operating in its Franklin territory. Yet under H.657, Franklin's rural telephone customers would pay substantial attachment fees of up to $45 per pole, which would be directed into the Community Media Public Benefit Fund to subsidize AMOs offering PEG programming in more densely populated communities.

- **Improper cross-subsidization of services**. Similarly, H.657 would force telephone companies and their customers to subsidize PEG services for cable customers. The Federal Communications Commission has adopted the so-called "Mixed Use Rule" (47 C.F.R. § 76.43), which prohibits a cable franchising authority from using its oversight of cable-TV services to regulate broadband services. H.657 would impose new regulations on communications and Internet companies and customers to satisfy a federal regulatory requirement for cable-TV providers: namely, the funding of PEG services, a requirement which is subject to a federal cap of 5% of the cable operator's cable service revenues

- Disruption of pole-attachment fee system. Finally, the imposition of a $15 fee per-attachment per-pole would completely undermine the regulatory system that the Federal Communications Commission (F.C.C.) and the Vermont Public Utility Commission (PUC) have established for calculating rental fees for pole attachments under 47 C.F.R. § 1.1406(d) and PUC Rule 3.706(C). Under the authority reserved to state public utility commissions in 47 U.S.C. § 224(c), the Vermont PUC has adopted a pole-rental calculation formula identical in all material respects to the F.C.C.'s formula. The F.C.C. and PUC formulas were adopted after lengthy administrative litigation that sought to achieve pole-attachment fees that fairly identify and apportion each party's actual costs and that do not result in any cross-subsidies or discrimination against any party or industry. As recently as 2020, the PUC conducted a rulemaking to update pole attachment calculations and fees, which all TAV members and other pole owners and attaching entities participated in. The "rough justice" of H.657 would unbalance this system in a way that would disrupt the careful equities that the federal and state regulators, and the industry parties, worked very hard to achieve.

For all of these reasons, the TAV member companies must oppose H.657 in its present form. While the Committee's funding goals for the legislation are worthy ones, the burdens of providing that funding cannot and should not be borne by Vermont's rural communications providers and their customers.

4. Proposed TAV Amendments (Alternatives)

The TAV member companies believe the tax burdens envisioned by H.657 fall unfairly on the TAV members and their customers in rural Vermont. The TAV member companies appreciate and fully support the language in the State-owned right-of-way tax (Section 15) that exempts a small communications carrier as defined in 30 V.S.A. 20 § 8082(10). One possible way to avoid the discriminatory impacts and other legal and regulatory concerns is to additionally exempt the TAV member companies, as small communications carriers as defined in 30 V.S.A. 20 § 8082(10), from the additional increased tax liabilities proposed in H. 657.

As noted, the TAV members operate under the unique regulatory provisions of 30 V.S.A. § 227. In addition, they uniquely operate in Vermont both as federal ETCS (for purposes of federal Universal Service Fund support) and as Vermont ETCs (for purposes of Vermont USF support).

H.657 could be amended to include the following language:

> "For purposes of this chapter, 'telecommunications service provider' shall not include any small communications carrier as defined in 30 V.S.A. 20 § 8082(10).

Another alternative, the bill could be amended to read as follows:

> "A telecommunications service provider that is designated as a Vermont-eligible telecommunications carrier under Section 7515(b) of Title 30 shall be exempt from the charges imposed by this chapter."

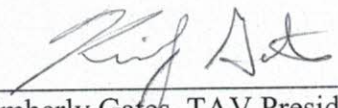
Of note with respect to the foregoing alternative is that, to be designated as a Vermont-eligible telecommunications carrier ("VETC") under 30 V.S.A. § 7515(b), a service provider must *first* meet all the requirements for designation as a *federal* eligible telecommunications carrier under 47 U.S.C. § 214(e)(2). All of the TAV member companies satisfy *both* the federal *and* the state ETC designation requirements.

Finally, in the event a small communications carrier exemption is not included with respect to the proposed real property tax on communications property, TAV would request that the existing 32 V.S.A. § 8522 language be included as an alternative to the FMV-based real property tax for qualifying small carriers. Two TAV members currently pay a gross revenue-based tax in lieu of property tax , so retaining the § 8522 gross revenue-based option as a small carrier alternative to the new real property tax on communications property would be straightforward.

Thank you for considering our perspective on these important issues.

Very truly yours,

The Telephone Association of Vermont



Kimberly Gates, TAV President
Controller, Franklin Telephone Company, Inc.