

1 S.73

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

5 Subject: Public service; universal service fund

6 Statement of purpose: This bill proposes to amend the universal service fund  
7 chapter to reflect the current technology and structure of the  
8 telecommunications industry.

9 An act relating to the universal service fund

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. LEGISLATIVE FINDINGS AND STATE AUTHORITY

12 (a) The general assembly finds that the services on which chapter 88 of  
13 Title 30 imposes a universal service charge should not depend upon regulatory  
14 classifications. Therefore, this chapter imposes duties on service providers  
15 independent of whether those providers are subject to regulation under other  
16 chapters of this title and independent of whether the Federal Communications  
17 Commission has defined a service to be a telecommunications service, an  
18 information service, an interstate service, an intrastate service, or otherwise.

19 (b) In chapter 88 of Title 30, the state of Vermont is exercising its authority  
20 to impose a tax on commerce occurring in this state. It is not acting under

1 authority delegated to the state by the Communications Act of 1934, as  
2 amended by the Telecommunications Act of 1996.

3 Sec. 2. 30 V.S.A. § 7501 is amended to read:

4 § 7501. PURPOSE; DEFINITIONS

5 (a) It is the purpose of this act to create a financial structure that will allow  
6 every Vermont household to obtain basic telecommunications service at an  
7 affordable price, and to finance that structure with a proportional charge on all  
8 telecommunications transactions that interact with the public switched  
9 network.

10 (b) As used in this chapter:

11 (1) “Ancillary services” means services that are associated with or  
12 incidental to the provision of telecommunications services, including but not  
13 limited to detailed telecommunications billing, directory assistance, vertical  
14 service, and voice mail services.

15 (2) “Basic telecommunications service” means that a customer has  
16 available at his or her location:

17 (A) switched voice grade interactive telecommunications service  
18 permitting origination and termination of calls;

19 (B) the ability to transmit network switching instructions through  
20 tones generated by customer-owned equipment;

1           (C) the ability to transmit and receive the customer's  
2 computer-generated digital data, either by digital or analog transmission,  
3 reliably and at common transmission rates, using customer-owned equipment;

4           (D) the ability to communicate quickly and effectively with  
5 emergency response personnel; and

6           (E) telecommunications relay service, as authorized under section  
7 218a of this title.

8           ~~(2)~~(3) "Interactive" means that a communications medium is regularly  
9 used to transmit information in two directions.

10           ~~(3) "Private network" means a telecommunications system entirely~~  
11 ~~owned and operated by a single corporate or individual person other than a~~  
12 ~~telecommunications service provider and not available to the general public.~~

13           ~~(4) "Public switched network" means the communications network~~  
14 ~~owned and operated by telecommunications service providers, some of whom~~  
15 ~~are common carriers.~~

16           "Coin-operated telephone service" means a telecommunications service  
17 paid for by inserting money into a telephone accepting direct deposits of  
18 money to operate.

19           ~~(5) "Telecommunications service" means the transmission of any~~  
20 ~~interactive electromagnetic communications that passes through the public~~  
21 ~~switched network. The term includes, but is not limited to, transmission of~~

1 ~~voice, image, data and any other information, by means of but not limited to~~  
2 ~~wire, electric conductor cable, optic fiber, microwave, radio wave, or any~~  
3 ~~combinations of such media, and the leasing of any such service.~~

4 ~~(A) Telecommunications service includes but is not limited to:~~

5 ~~(i) local telephone service, including any facility or service~~  
6 ~~provided in connection with such local telephone service;~~

7 ~~(ii) toll telephone service;~~

8 ~~(iii) directory assistance;~~

9 ~~(iv) two way cable television service; and~~

10 ~~(v) mobile telephone or telecommunication service, both analog~~  
11 ~~and digital.~~

12 ~~(B) Notwithstanding the above, for purposes of this chapter,~~  
13 ~~telecommunications service does not include:~~

14 ~~(i) Services consisting primarily of the creation of artistic material~~  
15 ~~or other information that is later transmitted over telecommunications~~  
16 ~~equipment, including information services and electronic bulletin boards, but~~  
17 ~~only to the extent that charges for such information processing are separated~~  
18 ~~from charges for other telecommunications services, and only to the extent that~~  
19 ~~such information is not used by any telecommunications service provider in the~~  
20 ~~administration of the telecommunications network.~~

1           ~~(ii) Mobile radio and paging services that do not have an~~  
2 ~~electronic interface into the public switched network.~~

3           ~~(iii) Private network services; provided, however, that payments~~  
4 ~~by a private network to a telecommunications service provider, such as for~~  
5 ~~point to point transmission services, are not exempt under this subdivision.~~

6           ~~(iv) [Repealed.]~~

7           ~~(v) Telecommunications services paid for at the point of purchase~~  
8 ~~by depositing coins or currency.~~

9           ~~(vi) Charges incurred by utilizing prepaid telephone calling cards~~  
10 ~~or prepaid authorization numbers.~~

11           ~~(6) “Telecommunications service provider” means a company required~~  
12 ~~by law to hold a certificate of public good from the public service board to~~  
13 ~~offer telecommunications service for intrastate service, or is authorized by the~~  
14 ~~Federal Communications Commission to offer interstate telecommunications~~  
15 ~~service.~~

16           (5) “Directory assistance” means an ancillary service of providing  
17 telephone number information, or address information, or both.

18           (6) “Paging service” means a telecommunications service that provides  
19 transmission of coded radio signals for the purpose of activating specific  
20 paggers; and such transmissions may include messages and/or sounds.

1           (7) “Prepaid calling service” means the right to access exclusively  
2 telecommunications services, which must be paid for in advance and which  
3 enables the origination of calls using an access number or authorization code,  
4 whether manually or electronically dialed, and that is sold in predetermined  
5 units or dollars of which the number declines with use in a known amount.

6           (8) “Prepaid wireless calling service” means a telecommunications  
7 service that provides the right to utilize mobile wireless service as well as other  
8 non-telecommunications services including the download of digital products  
9 delivered electronically, content and ancillary services, which service must be  
10 paid for in advance and which is sold in predetermined units or dollars of  
11 which the number declines with use in a known amount.

12           (9) “Retail sale” or “sold at retail” means any sale, lease, or rental for  
13 any purpose other than for resale, sublease, or subrent.

14           (10)(A) “Sales price” means the total amount of consideration, including  
15 cash, credit, property, and services, for which services are sold, leased, or  
16 rented, valued in money, whether received in money or otherwise, without  
17 deduction for the following:

18                   (i) The seller’s cost of the property sold;

19                   (ii) The cost of materials used, labor or service cost, interest,  
20 losses, all costs of transportation to the seller, all taxes imposed on the seller,  
21 and any other expenses of the seller;

1                   (iii) Charges by the seller for any services necessary to complete  
2 the sale, other than installation charges;

3                   (iv) Delivery charges; and

4                   (v) Consideration received by the seller from third parties if:

5                   (I) The seller actually receives consideration from a party other  
6 than the purchaser and the consideration is directly related to a price reduction  
7 or discount on the sale;

8                   (II) The seller has an obligation to pass the price reduction or  
9 discount through to the purchaser;

10                  (III) The amount of the consideration attributable to the sale is  
11 fixed and determinable by the seller at the time of the sale of the item to the  
12 purchaser; and

13                  (IV) One of the following criteria is met:

14                  (aa) The purchaser presents a coupon, certificate, or other  
15 documentation to the seller to claim a price reduction or discount where the  
16 coupon, certificate, or documentation is authorized, distributed, or granted by a  
17 third party with the understanding that the third party will reimburse any seller  
18 to whom the coupon, certificate, or documentation is presented;

19                  (bb) The purchaser identifies himself or herself to the seller  
20 as a member of a group or organization entitled to a price reduction or discount

1 (a “preferred customer” card that is available to any patron does not constitute  
2 membership in such a group); or

3 (cc) The price reduction or discount is identified as a third  
4 party price reduction or discount on the invoice received by the purchaser or on  
5 a coupon, certificate, or other documentation presented by the purchaser.

6 (B) Sales price shall not include:

7 (i) Discounts, including cash, term, or coupons that are not  
8 reimbursed by a third party that are allowed by a seller and taken by a  
9 purchaser on a sale;

10 (ii) Interest, financing, and carrying charges from credit extended  
11 on the sale of personal property or services, if the amount is separately stated  
12 on the invoice, bill of sale, or similar document given to the purchaser;

13 (iii) Any taxes legally imposed directly on the consumer that are  
14 separately stated on the invoice, bill of sale, or similar document given to the  
15 purchaser;

16 (iv) Installation charges;

17 (v) Credit for any trade-in; and

18 (vi) Telecommunications nonrecurring charges.

19 (11) “Telecommunications service” means the electronic transmission,  
20 conveyance, or routing of voice, data, audio, video, or any other information or  
21 signals to a point or between or among points. The term “telecommunications

1 service” includes such transmission, conveyance, or routing in which computer  
2 processing applications are used to act on the form, code, or protocol of the  
3 content for purposes of transmission, conveyance, or routing without regard to  
4 whether such service is referred to as voice-over internet protocol services or is  
5 classified by the Federal Communications Commission as enhanced or value  
6 added. Telecommunications service does not include:

7 (A) Data processing and information services that allow data to be  
8 generated, acquired, stored, processed, or retrieved and delivered by an  
9 electronic transmission to a purchaser where such purchaser’s primary purpose  
10 for the underlying transaction is the processed data or information;

11 (B) Installation or maintenance of wiring or equipment on a  
12 customer’s premises;

13 (C) Tangible personal property;

14 (D) Advertising, including but not limited to directory advertising;

15 (E) Billing and collection services provided to third parties;

16 (F) Internet access service;

17 (G) Radio and television audio and video programming services,  
18 regardless of the medium, including the furnishing of transmission,  
19 conveyance, and routing of such services by the programming service  
20 provider. Radio and television audio and video programming services shall  
21 include but not be limited to cable service as defined in 47 U.S.C. § 522(6) and

1 audio and video programming services delivered by commercial mobile radio  
2 service providers, as defined in 47 C.F.R. § 20.3;

3 (H) Ancillary services; or

4 (I) Digital products delivered electronically, including but not limited  
5 to software, music, video, reading materials, or ring tones.

6 (12) “Telecommunication nonrecurring charges” means an amount  
7 billed for the installation, connection, change, or initiation of  
8 telecommunications service received by the customer.

9 (13) “Value-added nonvoice data service” means a service, which  
10 otherwise meets the definition of telecommunications service, in which  
11 computer processing applications are used to act on the form, content, code, or  
12 protocol of the information or data primarily for a purpose other than  
13 transmission, conveyance, or routing.

14 (14) “Vertical service” means an ancillary service that is offered in  
15 connection with one or more telecommunications services, which offers  
16 advanced calling features that allow customers to identify callers and to  
17 manage multiple calls and call connections, including conference bridging  
18 services.

19 Sec. 3. 30 V.S.A. § 7502(a) is amended to read:

20 (a) Consistent with the purposes of this chapter, the public service board  
21 and the department of public service may interpret the provisions of this

1 chapter. Any person aggrieved by any such interpretation or policy may file  
2 with the public service board a petition for a declaratory ruling. Such a  
3 petition may include a request to determine whether newly created services,  
4 and other services not specifically mentioned by the ~~definition of~~  
5 ~~telecommunications service~~ definitions in this chapter, ~~are telecommunications~~  
6 ~~service~~ fall within the scope of one or another service defined in this chapter.  
7 All services declared to be ~~telecommunications~~ services subject to the charge  
8 shall thereafter be subject to the charge imposed by subchapter 3 of this  
9 chapter.

10 Sec. 4. 30 V.S.A. § 7503(b) and (e) are amended to read:

11 (b) The fiscal agent shall be selected by the public service board after  
12 competitive bidding. No ~~telecommunications~~ service provider required to  
13 collect the universal service charge shall be eligible to be the fiscal agent. The  
14 duties of the fiscal agent shall be determined by a contract with a term not  
15 greater than three years.

16 (e) The financial accounts of the fiscal agent shall be available at  
17 reasonable times to any ~~telecommunications~~ service provider in this state  
18 required to collect the universal service charge. The public service board may  
19 investigate the accounts and practices of the fiscal agent and may enter orders  
20 concerning the same.

1 Sec. 5. 30 V.S.A. § 7521 is amended to read:

2 § 7521. CHARGE IMPOSED; ~~WHOLESALE EXEMPTION~~

3 (a) A universal service charge is imposed on the sales price of all retail  
4 sales of ancillary and telecommunications service provided to a Vermont  
5 address, except coin-operated telephone service, paging service, prepaid  
6 calling service, prepaid wireless calling service, or value-added nonvoice data  
7 service. Where the location of a service and the location receiving the bill  
8 differ, the location of the service shall be used to determine whether the charge  
9 applies. The charge is imposed on the person purchasing the service, but shall  
10 be collected by the ~~telecommunications~~ service provider. When any portion of  
11 a bundle of services sold for a single price includes a service subject to the  
12 charge, the charge shall be calculated based on the price of the bundle, unless  
13 the service provider can identify the portion of the bundle not attributable to  
14 services subject to the charge through reasonable and verifiable standards  
15 based on the service provider's books and records kept in the regular course of  
16 business for other purposes, including but not limited to nontax purposes.  
17 Each ~~telecommunications~~ service provider that is required to file tariffs with  
18 the public service board shall include in its tariffs ~~filed at the public service~~  
19 ~~board~~ a description of its billing procedures for the universal service fund  
20 charge.

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Sec. 6. 30 V.S.A. § 7522 is amended to read:

§ 7522. REBATE FOR PAYMENT ELSEWHERE

When a ~~telecommunications~~ service is subject to the charge imposed by section 7521 of this title and also to a similar charge imposed for similar purposes in another state, the customer shall be liable only for the difference between the amount demonstrably paid in the other state and the amount due in this state.

Sec. 7. 30 V.S.A. § 7524(a), (c), and (d) are amended to read:

(a) ~~Telecommunications service~~ Service providers shall pay to the fiscal agent all universal service charge receipts collected from customers. A report in a form approved by the public service board shall be included with each payment.

(c) ~~Telecommunications service~~ Service providers shall maintain records adequate to demonstrate compliance with the requirements of this chapter. The board or the fiscal agent may examine those records in a reasonable manner.

(d) When a payment is due under this section by a ~~telecommunications~~ service provider who has provided customer credits under the lifeline program, the amount due may be reduced by the amount of credit granted.

1 Sec. 8. 30 V.S.A. § 7525(d) and (e) are amended to read:

2 (d) Upon petition of the fiscal agent, the public service board may impose,  
3 after notice and an opportunity for hearing, civil penalties against a  
4 ~~telecommunications~~ service provider who is delinquent in making payments to  
5 the fiscal agent. Any penalty imposed may be based upon the size and  
6 duration of the violation, but no such penalty shall exceed twice the amount of  
7 the delinquency or \$1,000.00, whichever is larger.

8 (e) A ~~telecommunications~~ service provider who has filed reports required  
9 by this chapter shall not be liable for delinquent payments that were due more  
10 than three years before the fiscal agent gave notice of delinquency to the  
11 provider.

12 Sec. 9. 30 V.S.A. § 7502(b) is amended to read:

13 (b) By rule or general order, the public service board may adopt procedures  
14 and standards to implement its responsibilities under this chapter. Rules may  
15 further clarify terms used in this chapter and may specify how to calculate line  
16 equivalents for the minimum or alternative charge imposed on presubscribed  
17 services. To the extent applicable, the public service board shall use the  
18 procedures and standards applicable to the setting of rates for regulated  
19 utilities. Those procedures may be designed to expedite the annual  
20 establishment of amounts to be collected and distributed by the fiscal agent.

1 Sec. 10. 30 V.S.A. § 7521(b) is amended to read:

2 (b) ~~The universal service charge shall not apply to wholesale transactions~~  
3 ~~between telecommunications service providers where the service is a~~  
4 ~~component part of a service provided to an end user. This exemption includes,~~  
5 ~~but is not limited to, network access charges and interconnection charges paid~~  
6 ~~to a local exchange carrier~~ The board may establish by rule a minimum charge  
7 per telephone line or telephone line equivalent per month of service or portion  
8 thereof if the board finds that to do so is necessary to ensure sufficient  
9 revenues for payment from the fund or to ensure equity among different types  
10 of telephone users. The board may also establish by rule a flat charge per  
11 telephone line or telephone line equivalent in lieu of the rate of charge  
12 established in subsection (a) of this section if the board finds that it is  
13 administratively efficient to do so and not contrary to the public good.

14 Sec. 11. 30 V.S.A. § 7523(a) is amended to read:

15 (a) Annually, after considering the probable expenditures for programs  
16 funded pursuant to this chapter, the probable service revenues of the industry  
17 and seeking recommendations from the department, the public service board  
18 shall establish a rate of charge to apply during the 12 months beginning on the  
19 following September 1. However, the rate so established shall not at any time  
20 exceed two percent of retail telecommunications service. The board's decision  
21 shall be entered and announced each year before July 15. However, if the

1 general assembly does not enact an authorization amount for E-911 before  
2 July 15, the board may defer decision until 30 days after the E-911  
3 authorization is established, and the existing charge rate shall remain in effect  
4 until the board establishes a new rate. Rates established by the board on a  
5 per-line or line-equivalent basis may be set notwithstanding the maximum  
6 percentage rate established by this section, but shall not be set at a rate that  
7 collects in excess of that which is required to support the program purposes as  
8 established by law and any necessary reserve.

9 Sec. 12. EFFECTIVE DATE

10 This act shall take effect upon passage.