

1 S.245

2 Introduced by Senator Illuzzi

3 Referred to Committee on

4 Date:

5 Subject: Telecommunications; regulation; interstate commission; compact

6 Statement of purpose: This bill proposes to establish a tri-state commission to
7 oversee and regulate the telecommunications services provided by public
8 utilities offering such services in Vermont, New Hampshire, and Maine.

9 An act relating to a tri-state telecommunications compact commission

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

11 Sec. 1. 30 V.S.A. chapter 94 is added to read:

12 CHAPTER 94. TRI-STATE TELECOMMUNICATIONS COMPACT

13 Subchapter 1. Tri-State Telecommunications Compact

14 ARTICLE I – PURPOSE AND FINDINGS

15 § 8200. PURPOSE AND FINDINGS

16 (a) The purpose of this compact is to recognize by constitutional
17 prerequisite the interstate character of telecommunication services in the
18 Northeast and to form a tri-state commission for this region composed of
19 Maine, New Hampshire, and Vermont. The mission of the commission is to
20 take such steps as are necessary to assure coordinated oversight and regulation

1 of telecommunications services; avoid duplicative regulations and costs; and
2 ultimately to ensure that the residents and businesses of the party states have
3 access to high quality, reliable, and affordable telecommunications services.

4 (b) The party states find that:

5 (1) Access to high quality, reliable telecommunications services at
6 predictable and affordable rates is a matter of great importance to the states of
7 Maine, New Hampshire, and Vermont, particularly with regard to economic
8 development, education, and public safety.

9 (2) The ability to regulate the operations and services of
10 telecommunications providers in a coordinated, nonduplicative manner is in
11 furtherance of the public interest of the region.

12 (3) The recent filing of Chapter 11 bankruptcy by FairPoint
13 Communications, Inc. underscores the need for greater state oversight of the
14 financial management and operations of telecommunications service providers.

15 (4) Cooperative rather than individual state action may address more
16 effectively the needs of the market and the development of
17 telecommunications infrastructure.

18 (5) Under our constitutional system, properly authorized, states acting
19 cooperatively may exercise more power to regulate interstate commerce than
20 they may assert individually without such authority. For this reason, the party

1 states invoke their authority to act in common agreement, with the consent of
2 Congress, under the compact clause of the Constitution.

3 ARTICLE II – DEFINITIONS AND RULES OF CONSTRUCTION

4 § 8201. DEFINITIONS AND RULES OF CONSTRUCTION

5 For the purposes of this compact and of any supplemental or concurring
6 legislation enacted pursuant thereto except as may be otherwise required by the
7 context:

8 (1) “Commission” means the tri-state telecommunications commission
9 established by this compact.

10 (2) “Compact” means the tri-state telecommunications compact
11 established by this compact.

12 (3) “Party state” means a state which has become a party to this compact
13 by the enactment of concurring legislation.

14 (4) “Region” means the territorial limits of the states of Maine, New
15 Hampshire, and Vermont.

16 (5) “Telecommunications service” means the transmission of any
17 interactive two-way electromagnetic communications, including voice, image,
18 data, and information. Transmission of electromagnetic communications
19 includes the use of any media such as wires, cables, television cables,
20 microwaves, radio waves, light waves, or any combination of those or similar
21 media. Telecommunications service does not include value-added nonvoice

1 services in which computer processing applications are used to act on the form,
2 content, code, and protocol of the information to be transmitted unless those
3 services are provided under tariff approved by the regulating entities of the
4 party states.

5 (6) “Telecommunications service provider” or “provider” means any
6 company offering telecommunications service that is subject to the jurisdiction
7 of the state entity responsible for regulating public utilities in each of the party
8 states. It does not include providers that offer telecommunications service in
9 no more than two of the party states.

10 ARTICLE III – COMMISSION ESTABLISHED

11 § 8202. COMMISSION ESTABLISHED

12 (a) Commission Established. There is hereby created a commission to
13 administer the compact, composed of delegations from each of the party states.
14 The commission shall be called the tri-state telecommunications commission.
15 Delegation members shall be residents and voters of and subject to such
16 confirmation process as is provided for in the appointing state. Delegation
17 members shall serve no more than three consecutive terms with no single term
18 of more than four years and shall be subject to removal for cause. In all other
19 respects, members shall serve in accordance with the laws of the state
20 represented. The compensation, if any, of the members of a state delegation
21 shall be determined and paid by each state, but their expenses shall be paid by

1 the commission. Each state delegation shall be entitled to one vote in the
2 conduct of the commission's affairs.

3 (b) Voting Requirements. All actions taken by the commission shall be by
4 majority vote of the delegations present. A majority of the delegations from
5 the party states shall constitute a quorum for the conduct of the commission's
6 business.

7 (c) Administration and Management.

8 (1) The commission shall elect annually from among the members of the
9 party state delegations a chair, a vicechair, and a treasurer. The commission
10 shall appoint an executive director and fix his or her duties and compensation.
11 The executive director shall serve at the pleasure of the commission and,
12 together with the treasurer, shall be bonded in an amount determined by the
13 commission. The commission may establish through its bylaws an executive
14 committee composed of one member elected by each delegation.

15 (2) The commission shall adopt bylaws for the conduct of its business
16 and shall have the power to amend and rescind those bylaws. The commission
17 shall publish its bylaws in convenient form with the appropriate agency or
18 officer in each of the party states. The bylaws shall provide for appropriate
19 notice to the delegations of all commission meetings and hearings and of the
20 business to be transacted at such meetings or hearings. Notice also shall be

1 given to other agencies or officers of party states as provided by the laws of
2 those states.

3 (3) The commission shall file an annual report with the Federal
4 Communications Commission and with each of the party states by submitting
5 copies to the governor, both houses of the legislature, and the head of the state
6 entity having responsibility for public utility regulation.

7 (4) In addition to the powers and duties elsewhere prescribed in this
8 compact, the commission shall have the power to:

9 (A) sue and be sued in any state or federal court;

10 (B) have a seal and alter the same at pleasure;

11 (C) acquire, hold, and dispose of real and personal property by gift,
12 purchase, lease, license, or other similar manner for its corporate purposes;

13 (D) borrow money and to issue notes, to provide for the rights of the
14 holders thereof, and to pledge the revenue of the commission as security
15 therefor, subject to the provisions of section 8209 of this compact;

16 (E) appoint such officers, agents, and employees as it may deem
17 necessary and prescribe their powers, duties, and qualifications; and

18 (F) create and abolish such offices, employments, and positions as it
19 deems necessary for the purposes of the compact and provide for the removal,
20 term, tenure, compensation, fringe benefits, pension, and retirement rights of

1 its officers and employees. The commission may also retain personal services
2 on a contract basis.

3 (d) Rulemaking Power. The commission is empowered to make and
4 enforce such additional rules and regulations as it deems necessary to
5 implement any provisions of this compact or to effectuate in any other respect
6 the purposes of this compact.

7 ARTICLE IV – POWERS OF THE COMMISSION

8 § 8203. POWERS TO PROMOTE REGULATORY UNIFORMITY,

9 SIMPLICITY, AND INTERSTATE COOPERATION

10 The commission is hereby empowered to:

11 (1) Investigate or provide for investigations or research projects
12 designed to review the existing laws and regulations of the party states and
13 consider their administration and costs and measure their impact on the
14 provision of telecommunications service within the region.

15 (2) Prepare and transmit to the party states model laws and regulations
16 dealing with the development of telecommunications infrastructure.

17 (3) Study and recommend to the party states joint or cooperative
18 programs for the administration of telecommunications laws and regulations
19 and to prepare estimates of cost savings and benefits of such programs.

20 (4) Encourage the harmonious relationships between the various
21 elements in the industry for the solution of their material problems and conduct

1 symposiums or conferences designed to improve industry relations or promote
2 a better understanding of problems.

3 (5) Prepare and release periodic reports on activities and results of the
4 commission's efforts to the party states.

5 (6) Examine current economic forces affecting telecommunications
6 service providers, the financial condition of providers, and the need for an
7 emergency order to relieve critical conditions within the industry.

8 § 8204. RATES; SERVICE; OPERATIONS

9 On due notice, the commission shall have jurisdiction to hear, determine,
10 render judgment and make orders and decrees in all matters provided for in the
11 charter or articles of any corporation owning or operating any plant, line, or
12 property subject to supervision under this compact and shall have like
13 regulatory jurisdiction in all matters respecting:

14 (1) The purity, quantity, or quality of any service or product provided by
15 a telecommunications carrier.

16 (2) The manner of operating and conducting any business of a
17 telecommunications provider so as to be reasonable and expedient and to
18 promote the safety, convenience, and accommodation of the public.

19 (3) The price, toll, rate, or rental charged by a telecommunications
20 provider when unreasonable or in violation of law.

1 (4) The sufficiency and maintenance of proper systems, plants, conduits,
2 appliances, wires, and exchanges, and when the public safety and welfare
3 require the location of such wires or any portion thereof underground.

4 (5) To restrain any telecommunications carrier from violations of law,
5 unjust discrimination, usurpation, or extortion.

6 (6) The issue of stock, mortgages, bonds, or other securities as provided
7 by rules adopted by the commission pursuant to this compact.

8 (7) Terms and conditions of extension of telecommunications service to
9 customers or applicants for service including:

10 (A) The conditions under which a deposit may be required, if any.

11 (B) The extension of service lines.

12 (C) The terms of payment of any required deposit.

13 (D) The return of any deposit.

14 (8) The grounds upon which telecommunications providers may
15 disconnect or refuse to reconnect service to customers.

16 (9) Procedures used by telecommunications providers in disconnecting
17 or reconnecting services and billing customers in regard thereto.

18 ARTICLE V – RULEMAKING PROCEDURE

19 § 8205. RULEMAKING PROCEDURE

20 Before promulgation of any regulations or amendment thereof, as provided
21 in Article IV of this compact, the commission shall conduct an informal

1 rulemaking proceeding to provide interested persons with an opportunity to
2 present data and views. Such rulemaking proceeding shall be governed by
3 section four of the federal Administrative Procedure Act, as amended (5 U.S.C.
4 § 553). In addition, the commission shall, to the extent practicable, publish
5 notice of rulemaking proceedings in the official register of each party state.
6 The commission may commence a rulemaking proceeding on its own initiative
7 or may, in its sole discretion, act upon the petition of any person including any
8 telecommunications provider, consumer or public interest groups, and local,
9 state, or federal officials.

10 ARTICLE VI – ENFORCEMENT

11 § 8206. RECORDS; REPORTS; ACCESS TO PREMISES

12 (a) The commission may by rule and regulation prescribe record-keeping
13 and reporting requirements for all regulated telecommunications providers.
14 For purposes of the administration and enforcement of this compact, the
15 commission is authorized to examine the books and records of any regulated
16 provider relating to its provision of telecommunications service in the region,
17 and for that purpose, the commission’s properly designated officers,
18 employees, or agents shall have full access during normal business hours to the
19 premises and records of all regulated providers.

20 (b) Information furnished to or acquired by the commission officers,
21 employees, or its agents pursuant to this section shall be confidential and not

1 subject to disclosure except to the extent that the commission deems disclosure
2 to be necessary in any administrative or judicial proceeding involving the
3 administration or enforcement of this compact or regulations of the
4 commission. The commission may promulgate regulations further defining the
5 confidentiality of information pursuant to this section. Nothing in this section
6 shall be deemed to prohibit the issuance of general statements based upon the
7 reports of a number of consumers which do not identify the information
8 furnished by any person or the publication by direction of the commission of
9 the name of any provider violating any regulation of the commission, together
10 with a statement of the particular provisions violated by such provider.

11 (c) No officer, employee, or agent of the commission shall intentionally
12 disclose information, by inference or otherwise, which is made confidential
13 pursuant to this section. Any person violating the provisions of this section
14 shall upon conviction be subject to a fine of not more than \$1,000.00 or to
15 imprisonment for not more than one year or to both and shall be removed from
16 office. The commission shall refer any allegation of a violation of this section
17 to the appropriate state enforcement authority or United States Attorney.

18 § 8207. SUBPOENA; HEARINGS; JUDICIAL REVIEW

19 (a) The commission is hereby authorized and empowered by its members
20 and its properly designated officers to administer oaths and issue subpoenas

1 throughout all party states to compel the attendance of witnesses and the giving
2 of testimony and the production of other evidence.

3 (b) Any telecommunications provider subject to an order may file a written
4 petition with the commission stating that any such order or any provision of
5 any such order or any obligation imposed in connection therewith is not in
6 accordance with law and praying for a modification thereof or to be exempted
7 therefrom. Such provider shall thereupon be given an opportunity for a
8 hearing upon such petition in accordance with regulations made by the
9 commission. After such hearing, the commission shall make a ruling upon the
10 prayer of such petition which shall be final if in accordance with law.

11 (c) The district courts of the United States in any district in which such
12 telecommunications provider has its principal place of business are hereby
13 vested with jurisdiction in equity to review a ruling provided for in subsection
14 (b) of this section, provided a bill in equity for that purpose is filed within 30
15 days from the date of the entry of such ruling. Service of process in such
16 proceedings may be had upon the commission by delivering to it a copy of the
17 bill of complaint. If the court determines that such ruling is not in accordance
18 with law, it shall remand such proceedings to the commission with directions
19 either to make such ruling as the court shall determine to be in accordance with
20 law or to take such further proceedings as in its opinion the law requires. The
21 pendency of proceedings instituted pursuant to this subdivision shall not

1 impede, hinder, or delay the commission from obtaining relief pursuant to
2 section 8208 of this compact. Any proceedings brought pursuant to section
3 8208 (except where brought by way of counterclaim in proceedings instituted
4 pursuant to this section) shall abate whenever a final decree has been rendered
5 in proceedings between the same parties, and covering the same subject matter,
6 instituted pursuant to this section.

7 § 8208. ENFORCEMENT WITH RESPECT TO

8 TELECOMMUNICATIONS PROVIDERS

9 (a) Any violation by a telecommunications provider of the provisions or
10 regulations adopted pursuant to this compact shall:

11 (1) constitute a violation of the laws of each of the party states. Such
12 violation shall render the violator subject to a civil penalty in an amount as
13 may be prescribed by the laws of each of the party states, recoverable in any
14 state or federal court of competent jurisdiction. Each day such violation
15 continues shall constitute a separate violation.

16 (2) constitute grounds for the revocation of a license, certificate, or
17 permit to provide telecommunications services under the applicable laws of the
18 party states.

19 (b) With respect to providers, the commission shall enforce the provisions
20 of this compact or regulations adopted hereunder:

1 adopted pursuant to this compact may include an assessment for the specific
2 purpose of their administration. These regulations shall provide for
3 establishment of a reserve for the commission's ongoing operating expenses.

4 (b) The commission shall not pledge the credit of any party state or of the
5 United States. Notes issued by the commission and all other financial
6 obligations incurred by it shall be its sole responsibility and no participating
7 state or the United States shall be liable therefor.

8 § 8210. AUDIT AND ACCOUNTS

9 (a) The commission shall keep accurate accounts of all receipts and
10 disbursements, which shall be subject to the audit and accounting procedures
11 established under its rules. In addition, all receipts and disbursements of funds
12 handled by the commission shall be audited yearly by a qualified public
13 accountant and the report of the audit shall be included in and become part of
14 the annual report of the commission.

15 (b) The accounts of the commission shall be open at any reasonable time
16 for inspection by duly constituted officers of the party states and by any
17 persons authorized by the commission.

18 (c) Nothing contained in this article shall be construed to prevent
19 commission compliance with laws relating to audit or inspection of accounts
20 by or on behalf of any party state or of the United States.

1 ARTICLE VIII – ENTRY INTO FORCE; WITHDRAWAL;

2 SEVERABILITY

3 § 8011. ENTRY INTO FORCE

4 This compact shall become effective when enacted into law by Maine, New
5 Hampshire, and Vermont and when the consent of the United States Congress
6 has been obtained.

7 § 8012. WITHDRAWAL FROM COMPACT

8 Any party state may withdraw from this compact by enacting a statute
9 repealing the same, but no such withdrawal shall take effect until one year after
10 notice in writing of the withdrawal is given to the commission and the
11 governors of all other party states. No withdrawal shall affect any liability
12 already incurred by or chargeable to a party state prior to the time of such
13 withdrawal.

14 § 8013. SEVERABILITY

15 If any part or provision of this compact is adjudged invalid by any court,
16 such judgment shall be confined in its operation to the part or provision
17 directly involved in the controversy in which such judgment shall have been
18 rendered and shall not affect or impair the validity of the remainder of the
19 compact.

1 Subchapter 2. Provisions Relating to Tri-State

2 Telecommunications Compact

3 § 8014. DELEGATION FROM STATE OF VERMONT

4 (a) The delegation from the state of Vermont to the commission established
5 by section 8202 of this title shall consist of five voting members. Members
6 shall include:

7 (1) The chair of the public service board.

8 (2) The commissioner of public service.

9 (3) One member appointed by the governor.

10 (4) One member appointed by the president pro tempore of the senate.

11 (5) One member appointed by the speaker of the house.

12 (b) Appointed members shall be appointed for staggered three-year terms.

13 Initial appointments may be for less than three-year terms. A delegation
14 member may seek reappointment for two additional terms. The appointed
15 members shall elect a chair of the board from among themselves.

16 (c) The members of the delegation shall receive per diem compensation and
17 expenses in accordance with section 1010 of Title 32.

18 (d) The department of public service shall provide administrative work as
19 directed by the board.

20 Sec. 2. EFFECTIVE DATE

21 This act shall be effective upon passage.