

Overview of State and Local Taxes and Fees Specific to Telecommunications (voice) and Broadband Providers and Services¹

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Work in Progress

Vermont Tax/Fee	Annual Revenue	Deposits/Distributions and Considerations
<p>Telephone Personal Property Tax²</p> <ul style="list-style-type: none"> • Enacted in 1947 • Centralized (rather than local) assessment on telecommunications personal property paid in monthly installments to Commissioner of Taxes • Applies to persons that own or operate a “telephone line or business” (not resellers³) • 2.37% of “net book value” • It is <i>in addition to</i> income tax • Can use alternative gross receipts tax if company received less than \$50M in annual gross operating revenue <ul style="list-style-type: none"> ○ Between 2¼ and 5¼ of gross operating revenue depending upon amount of revenue ○ In lieu of the personal property tax <u>and</u> income tax 	<p>\$2.3 million⁴</p>	<p>General Fund</p> <p><i>From Dept. of Taxes website:</i></p> <ul style="list-style-type: none"> • Persons that provide traditional telecommunications services through a public switched telephone network (PSTN) are subject to the tax. Persons that provide telecommunications services through mechanisms other than a PSTN, <u>including VoIP</u>, are also subject to the tax. (<i>Need to confirm whether all wireless and all VoIP (not just interconnected VoIP) providers are subject to tax</i>) • All personal property <i>used in whole or in part</i> for conducting a telecommunications business is subject to this tax, including personal property under construction, materials, and supplies • <u>Property taxed as real property is not subject to the tax</u>

¹ Not radio or tv audio or video programming.

² 32 V.S.A. § 8521; 32 V.S.A. § 8522 (special corporate personal property tax).

³ Persons that purchase access and network capacity from owners and operators of telecom networks and resell wired and wireless (except satellite) telecom services to consumers.

⁴ In 2022; \$2M in 2021; \$2.9M in 2020; \$4.1 in 2019.

		<ul style="list-style-type: none"> • “Net book value” of personal property means the original cost less depreciation of the property as computed for the federal income tax return required to be filed with the federal authorities for the corresponding tax year. Accelerated depreciation taken in accordance with Federal income tax law, including “bonus depreciation” under IRC § 168(k) (additional 1st year depreciation deduction), is includable when calculating net book value <p><i>Considerations</i></p> <ul style="list-style-type: none"> • Depreciation: floor and schedule <ul style="list-style-type: none"> ○ No floor in statute (other business assets in VT have a floor of 10% of cost⁵) ○ How does accelerated depreciation schedule compare to asset’s useful life expectancy? • How does “net book value” compare to “fair market value”? • Are cell towers considered real or personal property? • Company submits a list of all property, including a description of the property and town in which it is located⁶ • Is there a distinction between how the tax is applied to property exclusively used to provide telephone service as opposed to property that provides bundled services (broadband and/or cable TV)? (see above) • Should revenue or a portion thereof go to Ed Fund?
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⁵ 32 V.S.A. § 3618(a)(2).

⁶ Form TPP-651 and Schedule TPP-653.

<p>Exemption from <u>Local</u> Taxation⁷</p> <ul style="list-style-type: none"> • Real⁸ and personal estate,⁹ except land and buildings, used in carrying on telephone business <p>Exemption from <u>State</u> Education Property Tax Liability</p> <ul style="list-style-type: none"> • Personal property subject to telephone personal property tax¹⁰ <p>Telephone “land and buildings”</p> <ul style="list-style-type: none"> • Subject to both local and State property tax 	<p>NA</p>	<p><i>Considerations</i></p> <ul style="list-style-type: none"> • How does exemption affect municipal grand list? • How would local admin and collection costs compare with State costs? • Tax treatment of other commercial property <ul style="list-style-type: none"> ○ Most municipalities do not tax “business personal property;”¹¹ about 44 do; property appraised at FMV unless town votes to provide other options¹² ○ Electric utility poles, wires, and fixtures owned by nonmunicipal utilities taxed at appraisal value,¹³ defined as FMV¹⁴ ○ Facilities used in the generation, transmission, or distribution of electric power (including poles and wires) shall be set in the grand list as “real estate”¹⁵ ○ Broadband infrastructure owned by an electric distribution utility is taxable unless leased to a CUD or ISP working with CUD (100 Mbps symmetrical)¹⁶
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⁷ 32 V.S.A. § 3803(2).

⁸ 1 V.S.A. § 132 (“Land; lands; real estate” shall include lands, tenements, and hereditaments and all rights thereto and interests therein . . .”).

⁹ 1 V.S.A. § 129 (“Personal estate” shall include all property other than real estate).

¹⁰ 32 V.S.A. § 5401(10)(B) (excluded from definition of “nonhomestead property”).

¹¹ 32 V.S.A. § 3618(c)(1) (means tangible personal property of a depreciable nature used or held for use in any trade, business, etc. conducted for profit; does not include inventory, or goods so affixed to real property as to have become a part thereof and thus not severable or removable without material injury to the real property; and does not include poles, lines, and fixtures that are taxable under § 3620 (electric utility poles, lines, and fixtures owned by nonmunicipal utilities taxed at appraisal value, defined as FMV) and § 3659 (land and buildings of a municipal corporation situated outside its territorial limits).

¹² 32 V.S.A. § 3618(a).

¹³ 32 V.S.A. § 3620.

¹⁴ 32 V.S.A. § 3481(1)(A).

¹⁵ 32 V.S.A. § 3602a (includes all structures, machinery, poles, wires, and fixtures of all kinds and descriptions).

¹⁶ 32 V.S.A. § 3802(20).

		<ul style="list-style-type: none"> ○ Broadband infrastructure owned by a private ISP taxable at local level (unless town votes not to tax business personal property); taxable on statewide grand list. How much revenue generated annually? ○ Property of municipal corporations exempt from property tax, except that land and buildings (real property) situated outside its territorial limits is taxed by municipality where land and buildings are situated¹⁷ (What about personal property?)
<p>VT Universal Service Charge</p> <ul style="list-style-type: none"> ● 2.4% ● Revenue from 0.4% to VT Community Broadband Board (VCBB) ● Applies to VT retail voice service ● Consumer pays (phone bill or POS) ● Last increased in 2019 (0.4%) <p>Alternative contribution method – flat fee per access line</p> <ul style="list-style-type: none"> ● \$0.70 charge would raise about \$7.4M (2022 estimate) ● 17% earmarked for VCBB ● Proposed definitions in draft language – draft 1.2 ● How would multi-line cap affect revenue? ● How would Lifeline exemption affect revenue? ● What is the appropriate implementation date? ● Should there be a household plan, with decreasing fees per each additional line? 	<p>\$5 million</p>	<p>VT Universal Service Fund</p> <p>Provides funding for:</p> <ul style="list-style-type: none"> ● Broadband deployment (VCBB) ● Relay service & equipment (hearing impaired) ● VT Lifeline (State supplement for voice service; \$4.25) ● E-911 system <ul style="list-style-type: none"> ○ \$4.8M from 911 Fund ○ \$2.1M FY '24 General Fund ● Connectivity Fund (broadband)

¹⁷ 32 V.S.A. § 3659.

<p>State ROW Charge Applicable to Broadband and Wireless Providers¹⁸</p> <ul style="list-style-type: none"> • Enacted in 2007 • Applies to providers of broadband and wireless communications facilities or services • Applies to VTrans leases or licenses for access to or use of State-owned ROW • VTrans assesses and collects a “reasonable charge or payment” • VTrans may waive charge in whole or in part if provider offers to provide comparable value to the State so as to meet the public good as determined by VTrans and DPS • “Comparable value to the State” shall be construed broadly to further the State’s interest in ubiquitous broadband and wireless service availability at a reasonable cost • Waiver may not exceed 5 years • Waiver may be extended for up to 5 years if VTrans makes affirmative written findings demonstrating that the State has received and will continue to receive value that is comparable to the value to the provider of the waiver, or it may revise the terms of the waiver in order to do so <p>Permit and Fee for Use of State or Town Highway ROW¹⁹</p>	<p>\$0.00²¹</p>	<p>Transportation Fund</p> <ul style="list-style-type: none"> • Required by State statute • If federal-aid highway, must be leased at FMV and used for highway projects, not maintenance • Revenue generated could offset <u>State</u> appropriations to Transportation Fund <p><i>Considerations</i></p> <ul style="list-style-type: none"> • State highway total mileage about 2,700 miles (about 11,000 miles of municipal roads) (ROW on both sides of highway) • What percentage is federal-aid highways? • Relevant federal Communications Act Provisions <ul style="list-style-type: none"> ○ § 253 – Removal of barriers to entry ○ Cannot materially inhibit the ability of a company to provide telecom services (<u>City of Portland</u>, 9th Cir. 2020) ○ State and local authorities can require fair and reasonable compensation on a competitively neutral, nondiscriminatory basis for use of the public ROW ○ ROW fees above a safe harbor amount limited to a “reasonable approximation” of the costs of processing applications and managing the ROW (<u>City of Portland</u>) • ITFA does not preempt ROW fees on cable modem broadband revenue (<u>City of Eugene</u>, OR Supreme Ct, 2016)
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¹⁸ 19 V.S.A. § 26a(b).

¹⁹ 19 V.S.A. 1111 and 1112; 30 V.S.A. § 2502.

²¹ [Memorandum of the State Auditor, May 31, 2022](#) (19 V.S.A. § 26a(b) not being implemented; rates never finalized; VTrans does not know extent to which broadband providers are using State-owned ROW, e.g., miles of fiber in ROW; DPS analysis of comparable value not comprehensive).

<ul style="list-style-type: none"> • Application and recording fees • Transportation impact fee may be required to cover costs to mitigate impacts of projects to the transportation system²⁰ • No charge if project falls within an allowable use 		
<p>Wireless Telecom on State Buildings, Structures, and Land²²</p> <ul style="list-style-type: none"> • Leasing and licensing managed by the Secretary of Administration • Includes property owned or managed by BGS, VTrans, Dept. of Public Safety, and ANR 		
<p>State Mountaintop Fee²³</p> <ul style="list-style-type: none"> • Managed by Dept. of Forests, Parks, and Recreation • Leases and licenses for communications sites on certain designated mountaintops • Applies to public and private entities 	<p>\$100K</p>	<p>By agreement:</p> <ul style="list-style-type: none"> • 50% to Department of Public Safety in return for its management of the Killington Peak electronic communication site • 50% to help fund State park operations

²⁰ 19 V.S.A. § 1111(a); 10 V.S.A. chapter 151 (Act 250), subchapter 5.

²² 30 V.S.A. § 227b (The powers granted by this section shall not affect the Secretary’s duty, and any duty of the facility owner, to seek and obtain any applicable gubernatorial, quasi-judicial, or legislative review, approval, or permit required by law, including as necessary permits under 10 V.S.A. chapter 151 (Act 250), local planning and zoning permits, a certificate of public good under section 248a of this title, and legislative approval under 29 V.S.A. § 166 (sale or long-term lease of State lands), 10 V.S.A. § 2606 (exchange or lease of State forests and parks), or 10 V.S.A. § 2606a (State-owned mountaintop use as communications sites; In the event of a conflict between the provisions of this section and any other provision of law relating to the use of State-owned buildings, structures, and land, including the provisions of 29 V.S.A. § 165 (BGS State buildings) and 19 V.S.A. § 26a, the provisions of this section shall control.).

²³ 10 V.S.A. § 2606a.

<p>ANR Land Fees, generally²⁴</p> <ul style="list-style-type: none"> • Includes above mountaintop fees and other sites • Sites for radio communications (public safety; cell; broadband; radio and tv transmission) 		
<p>Pole Attachment Rental Charge (between pole owner and attaching entity)</p> <ul style="list-style-type: none"> • PUC Rule 3.700 • Communications providers pay an annual rental charge to pole owners for any attachments on telephone or electric utility poles (or ROW) in the distribution system • No additional application or payment for overlashing, unless additional costs necessitated • Rental charge formula $\left[\begin{array}{c} \text{Annual} \\ \text{Rental} \\ \text{perPole} \end{array} \right] = \left[\frac{\text{SpaceOccupied byAttachme nt}}{\text{TotalUsabl eSpace}} \right] \times \left[\begin{array}{c} \text{Net} \\ \text{Investment} \\ \text{perPole} \end{array} \right] \times \left[\begin{array}{c} \text{Carrying} \\ \text{Cost} \\ \text{Ratio} \end{array} \right]$		<p>“Net Investment per Pole” is that part of the pole account attributable to poles physically located in VT, and adjusted for depreciation and deferred taxes. This net amount is then divided by the number of poles owned by the Pole-Owning Utility in VT.</p> <p>“Carrying Cost Ratio” is the allowable revenue for each dollar of net pole investment, taking into account annual maintenance expense, depreciation, administrative expense, <u>taxes</u>, and return on net investment.</p> <p>Formula originally developed from the FCC’s old pole attachment rules, which included a “carrying charge rate” that is very similar to the carrying cost ratio in Rule 3.700.</p> <p>The FCC’s rules explained that the tax component referred to any “operating taxes” that are accounted for in Account 7200 of the Uniform System of Accounts for Telecommunications Companies (47 C.F.R. Subpart F). Account 7200 a broad tax account that <u>can include federal, state, and local income taxes, property taxes, gross receipt taxes, and franchise taxes.</u></p>

²⁴ Annual Report – Income from Electronic Communications Sites – 2022, Niels Rinehart, FPR Lands Administrative & Records Coordinator, January 15, 2023.

<p>Various Other Regulatory Fees</p> <ul style="list-style-type: none"> • Siting of telecom facilities (Act 250 or § 248a) • Telecom (voice) gross receipts tax to fund DPS/PUC²⁵ 		
<p>Sales and Use Tax on retail sales of (in relevant part):²⁶</p> <ul style="list-style-type: none"> • Tangible personal property²⁷ • Telecommunications service²⁸ <ul style="list-style-type: none"> ○ <u>Not</u> installation or maintenance of wiring or equipment on a customer’s premises ○ <u>Not</u> tangible personal property ○ <u>Not</u> broadband ○ <u>Not</u> audio and video programming services <p>Relevant Exemptions</p> <ul style="list-style-type: none"> • Wholesale transactions between telecom providers where service is part of service to end user, such as network access charges and interconnection charges paid to a local exchange carrier²⁹ • Sales of telecom service to an affiliate of the telecom provider³⁰ 		

²⁵ 30 V.S.A. § 22(a)(1)(B) (for telephone companies, 0.003 of gross operating revenue or \$300.00, whichever is greater, to fund DPS) and § 22(a)(2)(B) (for telephone companies, 0.002 of gross operating revenue or \$200.00, whichever is greater, to fund the PUC); § 22(d)(3) (any excess balance used the next year to directly reduce rates otherwise collected from ratepayers for the State’s Lifeline program).

²⁶ 32 V.S.A. § 9771(1) and (5).

²⁷ 32 V.S.A. § 9701(7) (means personal property that may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses and includes electricity, water, gas, steam, and prewritten computer software).

²⁸ 32 V.S.A. § 9701(19).

²⁹ 32 V.S.A. § 9741.

³⁰ 32 V.S.A. § 9742.

<p>Other Revenue Raising Proposals</p> <ul style="list-style-type: none"> • Annual per pole attachment fee (excise tax) applied to any wired and wireless communications facility attached to a utility pole <ul style="list-style-type: none"> ○ If revenue from pole attachment fee is intended to fund PEG, deduction for cable TV PEG funding ○ Multiple attachments on a single pole 	<p>\$4.4 million</p>	<p><i>Considerations</i></p> <ul style="list-style-type: none"> • Need a pole inventory and an attachment inventory • If inventory provided by attaching entity and/or pole owner, how is it verified? • What is the effective tax rate? • Other similar options <ul style="list-style-type: none"> ○ Per-mile fee for wires (attachment fee for wireless) ○ Apply tax to annual pole rental charge? (But not all overlashing included)
<p>Types of Taxes (State and Local)</p> <ul style="list-style-type: none"> • <u>Property</u> <ul style="list-style-type: none"> ○ Real ○ Personal • <u>Income and Franchise</u> <ul style="list-style-type: none"> ○ Individual ○ Corporate • <u>Estate</u> • <u>Special</u> <ul style="list-style-type: none"> ○ Excise ○ Corporation (e.g., TPPT) ○ Sales and Use 	<p>General Tax/Fee Policy Considerations</p> <ul style="list-style-type: none"> • What are administrative collection and enforcement costs for the State? For providers? Are there less administratively complex alternatives? • What is the impact on consumers (passed on costs)? Market? • Does it create a barrier to market entry? • Does the public benefit outweigh the costs? • If collecting a fee for a benefit or privilege conferred, is the fee “fair and reasonable compensation”? • What is the nexus between the tax/taxpayer and the intended use of revenue? • Is it competitively neutral and nondiscriminatory? (Are any similarly situated market participants advantaged/disadvantaged?) • Flat fee or ad valorem percentage? • Exempt some or all municipal or publicly-funded projects? 	