

No. 169. An act relating to the universal service fund and establishment of a high-cost program.

(S.180)

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

Sec. 1. FINDINGS AND PURPOSE

(a) The general assembly finds:

(1) Incumbent local exchange carriers (ILECs) are obligated to provide broad-based access to telephone services, even in areas that are high cost, sparsely populated, or filled with subscribers of limited means.

(2) Traditionally, ILECs were rewarded with an exclusive franchise in return for carrying out their regulatory responsibilities in unprofitable areas.

(3) However, with increased competition in the telecommunications field, particularly in profitable areas, ILECs have less of an opportunity to cover the costs of serving unprofitable areas.

(4) Vermont has a state universal service fund which is currently used to support the lifeline and enhanced 911 programs. Funds are generated by an end-user surcharge on all retail telecommunications service provided to a Vermont address.

(b) It is the purpose of this act to establish a new regulatory model under which ILECs can continue their costly responsibilities over wide areas and still have an opportunity to cover their costs, even in the presence of competitors.

* * * Universal Service Fund Studies * * *

Sec. 2. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST BASIC TELECOMMUNICATIONS SERVICE

(a) The general assembly intends that the universal service charge be used in the future as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. ~~In the future, and after this section has been amended by further act of legislation, payments may be made to reduce the cost of basic telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.~~

(b) The commissioner of public service, in conjunction with the public service board, shall conduct a study of the costs and other factors affecting the delivery of local exchange service by the incumbent local exchange carriers (the providers of last resort). The study shall ~~be conducted either as an independent inquiry or as part of a proceeding or docket affecting other matters~~ include an informal workshop process to be conducted by the board. Such process shall be noticed to the general public and structured to allow written and verbal comments by the general public, service providers, public officials, and others as determined by the board. The study shall:

(1) After considering information on how various factors affect the costs of providing telecommunications service in Vermont and elsewhere, estimate

the current costs and estimate, on a forward-looking basis, the differential costs of providing local exchange service to various customer groups throughout Vermont.

(2) Estimate the relationship between basic telecommunications service charges and universal service, and the threshold level beyond which universal residential service is likely to be harmed.

(3) Estimate the relationship between basic telecommunications service charges and opportunities for uniform economic development throughout the state, and the threshold prices beyond which such opportunities may be adversely affected.

(4) Estimate the potential effects of local exchange competition on uniform and affordable basic telecommunications service charges in all parts of the state.

(5) Examine policy options by which the cost to customers may be managed so as not to jeopardize universal service and the uniform economic development opportunities, including at least the following:

(A) establishing a maximum price for basic telecommunications service, beyond which customers would have access, without regard to income, to credits or vouchers negotiable for local exchange service from a local exchange provider or competitive access provider;

(B) broadening eligibility for the lifeline program; and

(C) establishing a mechanism to adjust the level of support for higher cost customers over time to reflect legal rights, recover historic costs, and reflect the advantages of improved technology and increased efficiency.

(6) Examine the actions, if any, of the Federal Communications Commission (FCC) in revising its universal service fund, and the need, if any, for additional action in Vermont. In particular, the study shall examine the impact on Vermont services caused by the FCC's report and order released November 18, 2011, which, among other things, expands the federal universal service fund to include broadband deployment in unserved areas. Further, the study shall consider the potential impact of various legal challenges to the FCC action on the federal universal service fund.

(7) Propose mechanisms to support universal service and rural economic development while securing the benefits of telecommunications competition for Vermont households and businesses.

(8) Include an audit of the universal service fund to examine, among other things, the contributions made to the fund in terms of the categories of telecommunications service providers covered as well as the specific services charged. In addition, the audit shall assess the disbursements made from the fund.

(9) Consider any other relevant issues that may arise during the course of the study.

(c) The results of the study, together with any plan for amending and distributing funds under this section, shall be submitted to the ~~general assembly~~ house committee on commerce and economic development and the senate committee on finance on or before ~~January 15, 1996~~ December 1, 2012.

(d) The commissioner of public service may contract with a consultant to conduct the study required by this section. Costs incurred in conducting the study shall be reimbursed from the state universal service fund up to \$75,000.00.

(e) To the extent this study may require disclosure of confidential information by a telecommunications service provider, such confidential information shall be disclosed to a third party pursuant to a protective agreement. In no event shall the third party be a person or persons employed by a business competitor or whose primary duties engage them in business competition with a telecommunications service provider submitting the confidential information. The third party may be the consultant retained by the commissioner under subsection (d) of this section or may be another third party agreed upon by the commissioner and the telecommunications service providers. The third party shall be responsible for aggregating the information and, once aggregated, may publicly disclose such information consistent with the purposes of this section. The confidentiality requirements of this subsection shall not affect whether information provided to an agency of the

state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Sec. 3. CREATION OF ONE-YEAR HIGH-COST PROGRAM

(a) There is created a high-cost program under which the universal service charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. Payments shall be made to Vermont's incumbent local exchange carriers (ILECs) for the purpose of reducing the cost of providing basic local telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.

(b) Funds distributed under the high-cost program are intended to defray the cost an ILEC incurs in building and maintaining its network so that it stands ready to serve any customer in its service area, even those in the most remote areas of Vermont. In order to achieve this goal, funding shall not be based upon the number of basic telecommunications services ordered, but rather upon the cost to serve any customer in that service area who may request basic local exchange service. This includes the costs of building and maintaining the entire network in each exchange in the applicable service area.

(c) The fiscal agent shall make distributions for the high-cost program to the ILECs, as required by this section. The percentage of funds distributed to

each ILEC shall reflect the percentage of total access lines reported by each ILEC in its annual report to the public service board.

(d) Any funds in excess of \$1,000,000.00 remaining in the Vermont universal service fund as of September 1, 2012 shall be distributed among all the ILECs in a manner determined by the commissioner of public service.

Sec. 4. STUDY ON THE STATE USF AND PREPAID WIRELESS

TELECOMMUNICATIONS SERVICES

(a) The commissioner of public service or designee, in consultation with the commissioner of taxes or designee, shall convene a work group to study issues related to application of the state's universal service charge established under 30 V.S.A. chapter 88 to prepaid wireless telecommunications services. The work group shall include representatives of prepaid wireless telecommunications service providers, Vermont retailers of prepaid wireless telecommunications services, consumers, the enhanced-911 program, and any other stakeholders identified by the commissioner. The study shall consider:

- (1) the retail transactions subject to the charge;
- (2) the amount of the charge;
- (3) application of the charge to bundled telecommunications services;
- (4) the effective date of any adjustments to the charge;
- (5) billing and collection procedures, including:
 - (A) notice of charges to consumers; and

(B) various payment and collection methods, including payment and collection procedures similar to those used for the sales and use tax imposed under 32 V.S.A. chapter 233;

(6) the ability of retailers or the department of taxes, if applicable, to retain a percentage of the fees collected to offset collection and administration costs and, if so, the percentage which may be retained; and

(7) any other matter deemed relevant by the commissioner.

(b) The commissioner, on behalf of the work group established under subsection (a) of this section, shall report his or her findings and recommendations to the house committee on commerce and economic development and the senate committee on finance not later than December 1, 2012. The report shall include draft legislation for consideration during the 2013 legislative session.

(c) It is the intent of the general assembly that the study authorized under this section shall not circumscribe any obligation which may be imposed on a wireless telecommunications service provider in pending or future proceedings before the public service board concerning designation as an eligible telecommunications carrier.

Sec. 5. EFFECTIVE DATE

(a) This act shall take effect on passage.

(b) Sec. 3 of this act (creation of high cost program) shall take effect on passage and shall be repealed on June 30, 2013.

Approved: May 18, 2012