

S.78

Introduced by Senators Illuzzi, Ashe, Carris, Doyle and Galbraith

Referred to Committee on Economic Development, Housing and General

Affairs

Date: February 22, 2011

Subject: Telecommunications; government reorganization; cellular, smart

grid, and broadband deployment; permitting

Statement of purpose: This bill proposes to establish policies and programs

designed to facilitate statewide cellular, smart grid, and broadband deployment

in Vermont by the end of the year 2013.

An act relating to the advancement of cellular, broadband, ~~smart grid~~, and
other technology infrastructure in Vermont

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

* * * Legislative Findings * * *

Sec. 1. PURPOSE AND FINDINGS

~~(a) It is the purpose of this act to establish policies and programs designed
to achieve statewide cellular, broadband, and smart grid deployment in
Vermont by the end of the year 2013. Although these technologies are
deployed by private sector providers, state regulation of the
telecommunications industry as well as government financial assistance can~~

1 ~~have a significant impact on private sector decisions to invest in and deploy~~
2 ~~infrastructure, particularly in underserved and unserved areas of the state.~~

3 ~~Vermont initiatives must recognize that:~~

4 ~~(1) the availability of high-speed Internet access will spur economic~~
5 ~~growth and job creation;~~

6 ~~(2) cellular telephone service is increasingly becoming the telephone~~
7 ~~service of choice for consumers and at the same time can serve as a lifeline for~~
8 ~~those who choose it; and~~

9 ~~(3) smart grid technology will create jobs and boost efficiency and~~
10 ~~energy conservation, while facilitating the drive to expand broadband Internet~~
11 ~~access.~~

(a) It is the purpose of this act to establish policies and programs designed to achieve statewide cellular and broadband deployment in Vermont by the end of the year 2013. Although these technologies are deployed by private sector providers, state regulation of the telecommunications industry as well as government financial assistance can have a significant impact on private sector decisions to invest in and deploy infrastructure, particularly in underserved and unserved areas of the state. Vermont initiatives must recognize that:

(1) the availability of high-speed Internet access will spur economic growth and job creation;

(2) cellular telephone service is increasingly becoming the telephone service of choice for consumers and at the same time can serve as a lifeline for those who choose it; and

(3) the deployment of smart grid technology may facilitate the drive to expand broadband Internet access.

12 (b) The General Assembly finds that:

1 (1) The Vermont telecommunications authority (VTA), established
2 under No. 79 of the Acts of 2007, has made significant steps toward providing
3 universal access to affordable cellular and broadband services in Vermont.

4 (2) The general assembly has made substantial investments in
5 furtherance of the goals of the VTA. For example, in fiscal year 2011, the
6 general assembly appropriated \$7,350,000.00 to the VTA to bring broadband
7 services to unserved target communities and underserved business districts,
8 pursuant to Sec. 2(b) of No. 161 and Sec. 4 of No. 78 of the Acts of the 2009
9 Adj. Sess. (2010).

10 (1) The Vermont telecommunications authority (VTA) was established
11 under No. 79 of the Acts of 2007 to facilitate the provision of universal access
12 to affordable cellular and broadband services in Vermont.

13 (2) The general assembly has made substantial investments in
14 furtherance of the goal of providing universal access to affordable cellular and
15 broadband services. For example, in fiscal year 2011, the general assembly
16 appropriated \$7,350,000.00 to the VTA to bring broadband services to
17 unserved target communities and underserved business districts, pursuant to
18 Sec. 2(b) of No. 161 and Sec. 4 of No. 78 of the Acts of the 2009 Adj. Sess.
19 (2010). The general assembly has also appropriated, including the
20 appropriation for the next fiscal year, \$2.35 million to fund the operations of
21 the VTA.

22 (3) In 2010, under the American Recovery and Reinvestment Act of
23 2009 (ARRA), Pub.L. No. 111-5, grants and loans totaling approximately
24 \$174,108,400.00 have been secured to fund major broadband initiatives in
25 Vermont, including the building of last-mile and middle-mile infrastructure, as
26 well as broadband adoption and mapping grants.

1 (4) The ARRA broadband funds flow through two nonregulatory
2 government entities: the National Telecommunications and Information
3 Administration (NTIA) and the rural utilities service (RUS) within the United
4 States Department of Agriculture. The NTIA funds can be used to provide
5 services in unserved and underserved areas, whereas the RUS funds can only
6 be used to provide services in unserved areas.

7 (5) Of the six ARRA awards secured by Vermont broadband projects,
8 the largest is the Wireless Open World (WOW), which promises near universal
9 coverage in Vermont through the use of TriBand 4G LTE wireless broadband
10 technology. For this project, Vermont Telephone Company (VTel) was
11 awarded a \$81,664,754.00 grant and a \$35,166,081.00 loan.

12 (6) Other ARRA-funded projects include:

13 (A) Vermont Fiber Link, a public-private partnership between the
14 VTa and Sovernet Fiber Corporation, which received a \$33,393,402.00 grant
15 to bring broadband to Vermont's key community anchor institutions.

16 (B) Vermont Broadband Enhanced Learning Link (VT BELL), for
17 which VTel received a \$12,256,492.00 grant to address bandwidth and
18 transport capacity shortage in the state's existing middle-mile infrastructure.

19 (C) Rural Broadband Advancement Project, for which Waitsfield and
20 Champlain Valley Telecom received a \$3,891,000.00 grant and a

1 \$1,668,000.00 loan to deploy fiber-to-the-home technology in rural service
2 areas.

3 (D) Vermont Community Broadband Project, e-Vermont, for which
4 the Vermont council on rural development received a \$2,525,675.00 grant to
5 increase Internet access and adoption in 24 small, mostly rural communities.

6 (E) Vermont Broadband Mapping, for which the Vermont center for
7 geographic information received a \$3,542,996.00 grant to create a
8 comprehensive inventory of broadband service availability, among other
9 things.

10 (7) In addition, Vermont utilities have received \$69 million in ARRA
11 matching funds through the federal Department of Energy to finish building a
12 smart grid statewide.

13 (8) The VTA is presently authorized to use up to \$40,000,000.00 in
14 revenue bonding backed by the moral obligation of the state for the purpose of
15 financing cellular and broadband projects. To date, no bonds have been issued.

16 ~~(9) With the advances already attained by the VTA coupled with the~~
17 ~~recent influx of federal dollars for broadband and smart grid initiatives,~~
18 ~~Vermont is well positioned to achieve the goal of providing universal~~
19 ~~availability of cellular and broadband service throughout the state.~~

20 (9) With the recent influx of federal dollars for cellular, broadband, and
21 smart grid initiatives, Vermont is well positioned to achieve the goal of

providing universal availability of cellular and broadband services throughout the state. That technology will include a 4G LTE wireless network.

(10) It is imperative, however, that the state establish sufficient mechanisms for public oversight, transparency, efficiency, and coordination.

(11) With the massive infusion of federal dollars to build out telecommunications infrastructure in Vermont, the VTA needs to reexamine its role in providing funds and its support for cellular and broadband deployment to avoid creation of an unfair advantage to those providers not in partnership or otherwise associated with the VTA.

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough but expedited permitting process must be available for the build-out of telecommunications facilities.

(13) It is imperative that Vermont create a regulatory environment in which all telecommunications carriers can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board's average time for reviewing an application under section 248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines and to manage a potential increase in the volume of applications.

1 (13) It is imperative that Vermont create a regulatory environment in
2 which all telecommunications carriers can compete fairly. The VTA made a
3 critical decision when it chose to be a competitor instead of an objective
4 coordinator.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November-December 2010 issue of National Geographic Traveler magazine.

5 (15) It is essential to bring broadband technologies to our educational
6 institutions. In doing so, we further our state's commitment to supporting and
7 enhancing the learning opportunities for our young talent and next generation
8 of Vermont's workforce. Particularly in a rural state where many of our
9 student population are isolated and without the wherewithal to travel, high
10 speed, redundant, reliable, and secure Internet connectivity is imperative.

11 *** Telecommunications Facilities, Certificates of Public Good ***

12 Sec. 2. 30 V.S.A. § 248a is amended to read:

13 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

14 FACILITIES

15 (a) Certificate. Notwithstanding any other provision of law, if the applicant
16 seeks approval for the construction or installation of telecommunications

1 ~~facilities that are to be interconnected with other telecommunications facilities~~
2 proposed or already in existence, the applicant may obtain a certificate of
3 public good issued by the public service board under this section, which the
4 board may grant if it finds that the facilities will promote the general good of
5 the state consistent with subsection 202c(b) of this title. A single application
6 may seek approval of one or more telecommunications facilities. An
7 application under this section shall include a copy of each application for any
8 other state permit, certificate, or approval already requested.

9 (b) Definitions. For the purposes of this section:

10 (1) "Ancillary improvements" means telecommunications equipment
11 and site improvements that are primarily intended to serve a
12 telecommunications facility, including utility connections; fencing; equipment
13 cabinets or shelters; emergency backup generators; and access roads.

14 (2)(A) "De minimis modification" means a proposed addition,
15 modification, replacement, or removal of telecommunications equipment,
16 antennas, or ancillary improvements at a lawfully constructed
17 telecommunications facility or on an existing support structure, whether or not
18 the structure was constructed as a telecommunications facility, or a
19 reconstruction of such a facility or existing support structure, that does not
20 substantially alter the character or impact of the telecommunications facility or
21 existing structure.

~~(B) A “de minimis modification” also means the addition,~~

~~modification, or replacement of telecommunications equipment, antennas, or
ancillary improvements on a telecommunications facility or existing support
structure, provided:~~

~~(i) The height and width of the facility or structure, excluding
equipment, antennas, or ancillary improvements, are not increased;~~

~~(ii) The total amount of impervious surface surrounding the
facility or structure is not increased by more than 300 square feet;~~

~~(iii) The total height or width of the facility or structure, including
equipment, antennas, and ancillary improvements, is not increased by more
than 10 feet; and~~

~~(iv) The additional equipment, antennas, or ancillary
improvements on the support structure, excluding cabling, does not increase
the aggregate surface area of the faces of the equipment, antennas, or ancillary
improvements on the support structure by more than 75 square feet.~~

~~(3)(A) “Limited size and scope” means:~~

~~(i) A new telecommunications facility, including any ancillary
improvements, that does not exceed 140 feet in height; or~~

~~(ii) An addition, modification, replacement, or removal of
telecommunications equipment at a lawfully constructed telecommunications
facility or on an existing support structure, and ancillary improvements, that~~

1 ~~would result in a facility of a total height of less than 200 feet and does not~~
2 increase the width of the existing support structure by more than 20 feet.

3 (B) For construction described in subdivision (2)(A) of this
4 subsection to be of limited size and scope, it shall not disturb more than one
5 acre of earth. The one-acre limit under this subdivision shall include any
6 means of motorized access to the facility or structure. For purposes of this
7 subdivision, "disturbed earth" means the exposure of soil to the erosive effects
8 of wind, rain, or runoff.

9 (4) "Telecommunications facility" means a communications facility that
10 transmits and receives signals to and from a local, state, national, or
11 international network used primarily for two-way communications for
12 commercial, industrial, municipal, county, or state purposes and any associated
13 support structure that is proposed for construction or installation which is
14 primarily for communications purposes, and any ancillary improvements that
15 are proposed for construction or installation and are primarily intended to serve
16 the communications facilities or support structure.

17 (2) An applicant may seek approval of construction or installation of a
18 telecommunications facility whether or not the telecommunications facility is
19 attached to an existing structure.

20 (5) "Wireless service" means any commercial mobile radio service,
21 wireless service, common carrier wireless exchange service, cellular service,

~~personal communications service (PCS), specialized mobile radio service,
paging service, wireless data service, or public or private radio dispatch
service~~

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and the public health and safety, and the public's use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162,~~ with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A letter of support for the application from an affected municipal legislative body

1 ~~or municipal or regional planning commission shall be a rebuttable~~
2 presumption of compliance with the municipal or regional plan, respectively.

3 (3) If the proposed facility relates to the provision of wireless service,
4 the proposed facility reasonably cannot be collocated on or at an existing
5 telecommunications facility. In making this determination, the board shall
6 consider whether:

7 (A) Existing telecommunications facilities are too far from the area
8 of needed coverage to function adequately or cannot accommodate the
9 proposed equipment at an elevation necessary to function reasonably;

10 (B) The proposed facility would cause the structural or spatial
11 capacity of the existing facility to be exceeded, and the existing facility cannot
12 be reinforced, modified, or replaced to accommodate planned equipment at a
13 reasonable cost;

14 (C) The proposed facility would materially affect the usefulness of
15 other equipment at the existing facility, and this impact cannot be mitigated or
16 prevented at a reasonable cost; and

17 (D) Collocation of the facility on or at an existing facility would
18 cause an undue adverse effect on aesthetics.

19 (d) Existing permits. When issuing a certificate of public good under this
20 section, the board shall give due consideration to all conditions in an existing

1 ~~state or local permit and shall harmonize the conditions in the certificate of~~
2 ~~public good with the existing permit conditions to the extent feasible.~~

3 (e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for
4 a certificate of public good under this section, the applicant shall serve written
5 notice of an application to be filed with the board pursuant to this section to the
6 legislative bodies and municipal and regional planning commissions in the
7 communities in which the applicant proposes to construct or install facilities;
8 the secretary of the agency of natural resources; the division for historic
9 preservation; the commissioner of the department of public service and its
10 director for public advocacy; and the landowners of record of property
11 adjoining the project sites. In addition, at least one copy of each application
12 shall be filed with each of these municipal and regional planning commissions.
13 Upon motion or otherwise, the public service board shall direct that further
14 public or personal notice be provided if the board finds that such further notice
15 will not unduly delay consideration of the merits and that additional notice is
16 necessary for fair consideration of the application.

17 (f)(1) Review period. ~~Unless~~ If the public service board identifies
18 determines that an application ~~raises~~ does not raise a significant issue, and if
19 there are no adverse comments received within 21 days of written notice being
20 served pursuant to subsection (e) of this section, the board shall issue a final
21 determination on an application filed pursuant to this section within ~~90~~ 45 days

1 ~~of its filing or, if the original filing did not substantially comply with the public~~
2 service board's rules, within ~~90~~ 45 days of the date on which the clerk of the
3 board notifies the applicant that the filing is complete.

4 (2) If the board determines that an application does not raise a
5 significant issue but adverse comments are received within 21 days of written
6 notice being served pursuant to subsection (e) of this section, the board shall
7 issue a final determination on an application filed pursuant to this section
8 within 90 days of its filing or, if the original filing did not substantially comply
9 with the public service board's rules, within 90 days of the date on which the
10 clerk of the board notifies the applicant that the filing is complete.

11 (3) If the board rules that an application raises a significant issue, it shall
12 issue a final determination on an application filed pursuant to this section
13 within ~~180~~ 120 days of its filing or, if the original filing did not substantially
14 comply with the public service board's rules, within ~~180~~ 120 days of the date
15 on which the clerk of the board notifies the applicant that the filing is
16 complete.

17 * * *

18 (i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new
19 applications for certificates of public good under this section may be
20 considered by the board.

1 ~~(j)(1) Minor applications telecommunications facilities of limited size and~~
2 ~~scope. The board may, subject to such conditions as it may otherwise lawfully~~
3 ~~impose, issue a certificate of public good in accordance with the provisions of~~
4 ~~this subsection and without the notice and hearings required by any provision~~
5 ~~other than subdivision (2) of this subsection if the board finds that such~~
6 ~~facilities will be of limited size and scope, and the petition application does not~~
7 ~~raise a significant issue with respect to the substantive criteria of this section.~~
8 ~~In proceedings under this subsection, the applicant's certification that the~~
9 ~~application complies with subdivision (c)(1) of this section shall establish a~~
10 ~~rebuttable presumption that the requirements of that subdivision have been~~
11 ~~met. If an applicant requests approval of multiple telecommunications~~
12 ~~facilities in a single application under this section, the board may issue a~~
13 ~~certificate of public good in accordance with the provisions of this subsection~~
14 ~~for all or some of the telecommunications facilities described in the petition~~
15 ~~application.~~

16 (2)(A) Any party seeking to proceed under the procedures authorized by
17 this subsection shall file a proposed certificate of public good and proposed
18 findings of fact with its petition application, and provide notice and a copy of
19 the petition application, proposed certificate of public good, and proposed
20 findings of fact to the commissioner of the department of public service and its
21 director for public advocacy, the secretary of the agency of natural resources,

1 ~~the division for historic preservation, and each of the legislative bodies and~~
2 municipal and regional planning commissions in the communities in which the
3 applicant proposes to construct or install facilities. ~~The~~ At the same time the
4 applicant files the documents specified in this subdivision with the board, the
5 applicant shall give written notice of the proposed certificate to the landowners
6 of record of property adjoining the project site or sites unless the board has
7 previously determined on request of the applicant that good cause exists to
8 waive or modify the notice requirement with respect to such landowners. Such
9 notice shall request comment to the board within 21 days of the notice on the
10 question of whether the ~~petition~~ application raises a significant issue with
11 respect to the substantive criteria of this section. If the board finds that a
12 ~~petition~~ application raises a significant issue with respect to the substantive
13 criteria of this section, the board shall hear evidence on any such issue.

14 (B) ~~Any~~ An applicant seeking a waiver or modification of notice to
15 adjoining landowners under this subsection shall file a request for such a
16 waiver or modification with the chair or the public service board not later than
17 30 days prior to serving written notice under subsection 248a(e) of this section,
18 together with a description of the project and its location, the applicant's
19 reasons for seeking waiver or modification, and the applicant's demonstration
20 that the standard for granting a waiver or modification is met. Any granting of
21 such a waiver or modification shall be based on a determination that the

1 ~~landowners subject to the waiver or modification could not reasonably be~~
2 affected by one or more of the proposed facilities, and that notice to such
3 landowners would constitute a significant administrative burden without
4 corresponding public benefit. The chair shall rule on a waiver or modification
5 request under this subsection within 14 days of the filing of the request.

6 (C) If the board accepts a request to consider an application under the
7 procedures of this subsection, then unless the public service board
8 subsequently determines that an application raises a significant issue, the board
9 shall issue a final determination on an application filed pursuant to this
10 subsection within 45 days of its filing or, if the original filing did not
11 substantially comply with the public service board's rules, within 45 days of
12 the date on which the clerk of the board notifies the applicant that the filing is
13 complete. If, subsequent to acceptance of an application under this subsection,
14 the board rules that an application raises a significant issue, it shall issue a final
15 determination on an application filed pursuant to this subsection within 90 days
16 of its filing or, if the original filing did not substantially comply with the public
17 service board's rules, within 90 days of the date on which the clerk of the
18 board notifies the applicant that the filing is complete.

19 * * *

20 (k) De minimis modifications. An applicant intending to make a de
21 minimis modification of a telecommunications facility shall provide written

~~notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; and the commissioner of public service and its director for public advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.~~

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a ~~petition~~ an application raises a

1 ~~substantial issue with regard to one or more substantive criteria of this section~~

2 shall not prevent the board from waiving other substantive criteria that it has
3 determined are not applicable to such a telecommunications facility.

4 (m) Notwithstanding any other provision of this section, with respect to an
5 application for a telecommunications facility:

6 (1) The application may be filed with the commissioner of public
7 service for approval rather than with the public service board; and

8 (2) If the application is filed with the commissioner:

9 (A) On filing, the applicant shall send a copy of the application,
10 together with a notice that the commissioner's approval is requested and that
11 comments may be submitted within the period described in subdivision (2)(B)
12 of this subsection, to the legislative body and municipal and regional planning
13 commission in each community in which the applicant proposes to construct or
14 install the facility; the secretary of natural resources; the division for historic
15 preservation; and the landowners of record of property adjoining the facility
16 site;

17 (B) The provisions of 3 V.S.A. §§ 809–815 shall not apply to the
18 proceeding before the commissioner, and persons shall submit any written
19 comments on the application to the commissioner not later than 10 days
20 following certification by the applicant that copies of the application and notice
21 were sent as required by subdivision (A) of this subdivision (2);

1 ~~(C) The commissioner shall determine whether the application~~
2 ~~satisfies the requirements of subsection (c) of this section and whether a~~
3 ~~certificate of public good under subsection (a) of this section should be issued;~~

4 ~~(D) The commissioner shall have the same authority to condition a~~
5 ~~certificate that the public service board otherwise would have under this~~
6 ~~section;~~

7 ~~(E) The decision of the commissioner on the application shall be~~
8 ~~issued within 15 days of when the commissioner determines the application to~~
9 ~~be complete and shall have the same legal effect as a decision of the board; and~~

10 ~~(F) If aggrieved, the applicant or other party who filed written~~
11 ~~comments with the commissioner may appeal the decision of the commissioner~~
12 ~~within 15 days to the chair of the public service board.~~

13 ~~(G) The appellant shall provide notice of the appeal to the~~
14 ~~commissioner, the applicant if other than the appellant, and all parties that filed~~
15 ~~written comments with the commissioner. The filing of an appeal shall not~~
16 ~~automatically stay the decision.~~

17 ~~(H) The chair shall hold a de novo hearing as soon as practicable on~~
18 ~~those issues that have been appealed and shall issue his or her final decision~~
19 ~~within 60 days of the date the appeal was filed. The proceeding shall be~~
20 ~~summary in nature. The record created by the commissioner shall be admitted~~
21 ~~into evidence. In extraordinary circumstances, the chair may authorize use of~~

1 ~~discovery, subject to the inherent time constraints required because of the~~
2 subject matter. The Vermont Rules of Evidence shall not apply, except for
3 those rules respecting privilege. Affidavits of parties and witnesses shall be
4 admissible evidence that may be rebutted by witnesses or affidavits offered by
5 other parties. Other evidence is admissible if it is of a type commonly relied
6 upon by reasonably prudent persons in the conduct of their daily affairs.
7 Telephone testimony shall be authorized unless otherwise ordered for good
8 cause shown. Any person shall be entitled, but not required, to be represented
9 by an attorney.

10 (I) The commissioner is authorized to appoint a designee to carry out
11 his or her responsibilities under this subsection.

12 * * * Stormwater Discharge Permits;

13 Telecommunications Facilities * * *

14 Sec. 3. 10 V.S.A. § 1264 is amended to read:

15 § 1264. STORMWATER MANAGEMENT

16 * * *

17 (j) Notwithstanding any other provision of law, if an application to
18 discharge stormwater runoff pertains to a telecommunications facility as
19 defined in 30 V.S.A. § 248a:

1 ~~(1) Under the state permit program described in subsection (a) of this~~
2 ~~section, the secretary shall issue a decision on the application within 30 days of~~
3 ~~the date the secretary determines the application to be complete; and~~

4 ~~(2) Under the federal NPDES program described in subsection (a) of~~
5 ~~this section, the secretary shall issue a decision on the application within 30~~
6 ~~days of the date the secretary determines the application to be complete, unless~~
7 ~~complying with this 30-day requirement would cause the processing of the~~
8 ~~application to contravene applicable federal law, in which case the secretary~~
9 ~~shall issue a decision on the application at the earliest possible date consistent~~
10 ~~with federal requirements.~~

11 Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF
12 NATURAL RESOURCES

13 (a) The general assembly finds that:

14 (1) On enactment, Sec. 43 of No. 54 of the Acts of 2009 required the
15 agency of natural resources, by January 15, 2010, to amend its rules regarding
16 stormwater management to provide alternative guidance for permitting
17 renewable energy projects located at high elevations. The agency failed to
18 meet this deadline.

19 (2) Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010)
20 extended the deadline described in subdivision (1) of this subsection to

1 ~~February 1, 2011. The agency proposed the required rule amendments but still~~
2 ~~failed to meet the extended deadline.~~

3 (3) As required by Act 54, the agency's proposed rule amendments
4 apply to the permitting of stormwater discharges from renewable energy
5 projects located at high elevations; however, the substance of those
6 amendments is applicable as well to telecommunications facilities at the same
7 elevations.

8 (b) With respect to a stormwater discharge from a telecommunications
9 facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall
10 apply the same provisions of its stormwater management rule, including those
11 provisions regarding a watershed hydrology protection credit, that it applies to
12 high elevation renewable energy projects, if the facility is located or is
13 proposed to be located at a high elevation as defined in those provisions and
14 the discharge is to a water that is not principally impaired by stormwater
15 runoff.

16 (c) No later than 30 days after the effective date of this act, the agency shall
17 conform its stormwater management rule to the provisions of this section. For
18 the purpose of this subsection, the agency is authorized to and shall use the
19 procedures for emergency rules pursuant to 3 V.S.A. § 844, except that the
20 agency need not determine that there exists an imminent peril to public health.

1 ~~safety or welfare, and the provisions of 3 V.S.A. § 844(b) (expiration of~~
2 ~~emergency rules) shall not apply.~~

3 * * * Communications Lines; Act 250; Acreage Determination * * *

4 Sec. 4. 10 V.S.A. § 6001(3)(C) is amended to read:

5 (C) For the purposes of determining jurisdiction under subdivisions
6 (3)(A) and (3)(B) of this section, the following shall apply:

7 * * *

8 (vi) Communications lines. For purposes of this subdivision,
9 “communications line” means a wireline or fiber-optic cable communications
10 facility that transmits and receives signals to and from a local, state, national,
11 or international network used primarily for two-way communications for
12 commercial, industrial, municipal, county, or state purposes. The following
13 improvements associated with the construction or installation of a
14 communications line shall not cause land to be counted toward the acreage
15 thresholds of subdivisions (3)(A)(i) and (ii) of this section:

16 (I) The attachment of a new or replacement cable or wire to an
17 existing structure.

18 (II) The replacement of an existing pole with a new pole that is
19 not more than ten feet taller than the pole it replaces.

~~*** Telecommunications; Appeals;~~

Agency of Natural Resource Permits ***

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review ~~by the public service board~~ under, respectively, 30 V.S.A. § 248 §§ 248 and 248a.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to

1 ~~section 1004 (dams before the Federal Energy Regulatory Commission) or~~
2 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title.

3 (b) For the purpose of this section, “board,” “plant,” and “renewable
4 energy” have the same meaning as under 30 V.S.A. § 8002, and
5 “telecommunications facility” has the same meaning as under 30 V.S.A.
6 § 248a.

7 * * *

8 (d) The public service board ~~may~~ shall consolidate or coordinate appeals
9 under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~
10 §§ 248 and 248a, where those appeals and proceedings all relate to the same
11 project, unless such consolidation or coordination would be clearly
12 unreasonable. In such a consolidated proceeding, the board’s decision shall be
13 issued as a single order that includes the necessary findings of fact and
14 conclusions of law and, if the decision is to approve the plant or facility, any
15 and all conditions of approval. This authority to consolidate or coordinate
16 appeals and proceedings shall not confer authority to alter the substantive
17 standards at issue in an appeal or proceeding.

18 * * *

19 (g) An appeal under this section shall be to the commissioner of public
20 service and not to the board if the act or decision of the secretary from which
21 appeal is taken pertains to a telecommunications facility for which an

1 ~~application for a certificate of public good is filed with the commissioner of~~
2 ~~public service under 30 V.S.A. § 248a(m). Subsections (e) (de novo hearing)~~
3 ~~and (f) (service of process, public service board rules, appeals to supreme~~
4 ~~court) of this section shall not apply to such an appeal. Instead, the provisions~~
5 ~~of 30 V.S.A. § 248a(m)(2) (procedure before commissioner; appeal to chair of~~
6 ~~the board) shall apply. In deciding the appeal, the commissioner shall apply~~
7 ~~the substantive standards that were before the secretary. The commissioner~~
8 ~~shall consolidate appeals under this subsection with each other and with~~
9 ~~proceedings under 30 V.S.A. § 248a(m), where those appeals and proceedings~~
10 ~~all relate to the same project, unless such consolidation or coordination would~~
11 ~~be clearly unreasonable. In such a consolidated proceeding, the~~
12 ~~commissioner's decision shall be issued as a single order that includes the~~
13 ~~necessary findings of fact and conclusions of law and, if the decision is to~~
14 ~~approve the facility, any and all conditions of approval.~~

** * * Telecommunications Facilities, Certificates of Public Good * * **

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include

a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) “Ancillary improvements” means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) “De minimis modification” means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) The height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) The total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) The addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) The additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3)(A) “Limited size and scope” means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000

square feet of earth. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that the board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision.

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall

be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Review period. ~~Unless~~ If the public service board ~~identifies~~ determines that an application ~~raises~~ does not raise a significant issue, the board shall issue a final determination on an application filed pursuant to this section within ~~90~~ 60 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within ~~90~~ 60 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not raise a significant issue with respect to the substantive criteria of this section. The board may make findings based on the application and the supporting evidence submitted by the applicant. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the ~~petition~~ application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its ~~petition~~ application, and provide notice and a copy of the ~~petition~~ application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) ~~Any~~ An applicant seeking a waiver or modification of notice to adjoining landowners under this subsection shall file a request for such a waiver or modification with the public service board not later than 30 days

1 prior to serving written notice under subsection 248a(e) of this section,
2 together with a description of the project and its location, the applicant's
3 reasons for seeking waiver or modification, and the applicant's demonstration
4 that the standard for granting a waiver or modification is met. Any granting of
5 such a waiver or modification shall be based on a determination that the
6 landowners subject to the waiver or modification could not reasonably be
7 affected by one or more of the proposed facilities, and that notice to such
8 landowners would constitute a significant administrative burden without
9 corresponding public benefit. The board shall rule on a waiver or
10 modification request under this subsection within 21 days of the filing of the
11 request.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; and the commissioner of public service and its director for public advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may be filed only by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate. ~~and~~ Subject to the provisions of subdivision (c)(1) of this section regarding waiver of the substantive criteria set forth in that subdivision, the board may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a ~~petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

** * * Stormwater Discharge Permits; Telecommunications Facilities * * **

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

** * **

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 60 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF NATURAL RESOURCES

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) The following improvements associated with the construction or installation of a communications line shall not be considered a substantial change to a utility line cleared and in use for electrical distribution or communications lines and related facilities and shall not require a permit under subsection (a) of this section:

(A) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(B) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, "communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

(3) Nothing in this subsection shall be construed to expand the scope of jurisdiction under this chapter over electric distribution and communications lines as interpreted and applied prior to the effective date of this act by the district commissions and the land use panel of the natural resources board.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals; Agency of Natural Resource Permits * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review by the public service board under, respectively, 30 V.S.A. § 248 §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, “board,” “plant,” and “renewable energy” have the same meaning as under 30 V.S.A. § 8002, and “telecommunications facility” has the same meaning as under 30 V.S.A. § 248a.

** * **

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. § 248 §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board’s decision may be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

** * **

* * * Broadband; Historic Preservation;

Expedited Review * * *

Sec. 7. 22 V.S.A. § 723 is amended to read:

§ 723. DUTIES AND POWERS OF DIVISION AND STATE HISTORIC
PRESERVATION OFFICER

* * *

(c) The state historic preservation officer and the division shall adopt a procedure for the efficient review in accordance with this chapter and the National Historic Preservation Act, 16 U.S.C. chapter 1A, subchapter II, of undertakings related to the provision of broadband services, and shall take all feasible steps to effect such efficient review. Unless contrary to federal requirements, any review of pole attachments shall be conducted using a systemic approach. For the purpose of this subsection, “broadband” means high speed Internet access that meets the minimum technical objectives adopted by the department of public service pursuant to 30 V.S.A. § 8077(a).

* * * Implementation * * *

Sec. 8. IMPLEMENTATION

Within 90 days of the effective date of this act, the state historic preservation officer and the division for historic preservation shall adopt a procedure pursuant to Sec. 7 of this act, 22 V.S.A. § 723(c) (broadband; efficient review).

* * * Rapid Response Process for Pole Attachment Disputes * * *

Sec. 9. 30 V.S.A. § 2531 is added to read:

§ 2531. POLE ATTACHMENTS; APPLICATIONS; DISPUTE

RESOLUTION

(a) Finding. It is in the best interest of Vermonters and the Vermont economy for all broadband deployment projects, including those funded in whole or in part with broadband funds under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, to proceed in a timely and coordinated manner.

(b) Filing of Applications. The chair of the public service board is authorized to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work pursuant to the standards and time frames specified in public service board Rule 3.700 et seq.

(c) Dispute Resolution. Notwithstanding public service board Rule 3.710 (complaint procedures), if a dispute arises between an attaching entity and a pole-owning utility or another attaching entity, the aggrieved party may file a request for relief with the clerk of the public service board. The chair of the public service board shall designate a hearing officer to resolve such requests pursuant to the rapid response process prescribed in this section.

1 ~~(d) Rapid Response Process. The rapid response process shall proceed as~~
2 ~~follows:~~

3 ~~(1) The applicant shall notify the party with whom there is a dispute that~~
4 ~~it is planning to file a request for relief with the clerk on the next business day.~~

5 ~~(2) The applicant shall file the request electronically with the clerk of~~
6 ~~the board and copy the respondent and any other interested party, such as an~~
7 ~~entity already attached to the pole or poles in dispute. The request shall~~
8 ~~contain the name of the applicant, the date of filing, the times the applicant will~~
9 ~~be available for a conference call on the second business day after the request~~
10 ~~is filed, as well as sufficient information to indicate:~~

11 ~~(A) the facts underlying the request;~~

12 ~~(B) the harm which is resulting or could result to the applicant due to~~
13 ~~the situation;~~

14 ~~(C) the informal attempts made to resolve the dispute.~~

15 ~~(D) what specifically about the situation requires immediate redress;~~
16 ~~and~~

17 ~~(E) a description of the steps which the parties have taken to resolve~~
18 ~~the situation prior to the filing of the complaint.~~

19 ~~(3) Within one business day of receiving a copy of the request, the~~
20 ~~respondent shall electronically acknowledge its receipt of the request to the~~
21 ~~clerk and the applicant and shall specify times when it will be available for a~~

~~conference call on the next business day. The respondent may respond to~~
factual issues in the request or demand that the request be dismissed or referred
to the full board, as appropriate, for reasons including that the dispute is not:

(A) ripe for review; or

(B) a matter that should be addressed pursuant to the rapid response
process.

(4) The clerk shall schedule a time for a preliminary conference call
within two business days of the filing of the request. During the preliminary
conference call, the hearing officer may consider any information he or she
deems relevant pursuant to the standards authorized in subsection (h) of this
section.

(5) If the matter is not resolved to the satisfaction of all parties, the
hearing officer may schedule a final conference call at which the hearing
officer may hear additional evidence and either issue an oral decision or
schedule time for a written decision.

(6) A final order shall be issued within 15 days after the filing of the
request. Unless stayed by the hearing officer upon request, the final order
remain in effect pending appeal.

(7) Within 10 business days after the final order is issued, a party may
appeal the final order to the chair of the public service board. The chair shall
take final action within 30 days after the filing of the appeal. Appeals to the

1 ~~chair shall be on the record; however, the chair in his or her discretion may~~
2 elect to receive additional arguments.

3 (e) Caption and docket number. All documents, correspondences, and
4 references to a particular request should reference the original caption. Once a
5 docket number is assigned, all correspondence should reference that number.

6 (f) Preliminary relief. The hearing officer shall have authority to require
7 parties to take actions pending the final resolution of the proceeding in
8 consideration of the following: the likelihood that the relief requested would
9 be ordered at the conclusion of the rapid response process; the benefit to the
10 public or affected customers compared with the harm to the utility or other
11 customers; and, the public interest. In determining whether to grant
12 preliminary relief, the hearing officer shall also consider any associated costs.
13 Any party adversely affected by a decision under this subsection may appeal to
14 the chair of the public service board.

15 (g) Hearing officer authority. The hearing officer may dismiss or defer a
16 request without prejudice and direct the parties to continue negotiations. The
17 hearing officer may indicate a date on which, if the parties have still not
18 reached a resolution, the parties may refile the request. The hearing officer
19 may also determine that the issues in the request are policy issues that would
20 better be served in the broader context of a board investigation. In that case,

1 ~~the hearing officer shall refer the matter to the chair of the public service~~
2 ~~board.~~

3 ~~(h) Summary proceeding. Any action filed under the rapid response~~
4 ~~process contained in this section shall be summary in nature. The hearing~~
5 ~~officer may authorize use of discovery, subject to the inherent time constraints~~
6 ~~required because of the subject matter. The Vermont Rules of Evidence shall~~
7 ~~not apply, except for those rules respecting privilege. Affidavits of parties and~~
8 ~~witnesses shall be admissible evidence that may be rebutted by witnesses or~~
9 ~~affidavits offered by other parties. Other evidence shall be admissible if it is of~~
10 ~~a type commonly relied upon by reasonably prudent persons in the conduct of~~
11 ~~their daily affairs. Telephone testimony shall be authorized unless otherwise~~
12 ~~ordered for good cause shown. Any person shall be entitled, but not required,~~
13 ~~to be represented by an attorney.~~

14 ~~(i) Sunset. This section shall take effect on passage and shall be repealed~~
15 ~~on July 1, 2014.~~

Sec 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act's passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband, telecommunications, or cable television deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner and shall include notice to all potentially affected persons. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such

that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

* * * Transmission and Distribution Poles; Fiber;

Nonexclusive Use * * *

Sec. 10. 30 V.S.A. § 8092 is amended to read:

§ 8092. RATES; TERMS; CONDITIONS

* * *

(h)(1) A company may limit wireline attachments on electric transmission structures exclusively carrying voltages of 110 kV or higher to fiber-optic facilities attached and maintained by the company, if the company allows communications service providers to use fiber-optic facilities installed and maintained by the company and offers to install such fiber-optic facilities on such electric transmission structures where there are not sufficient facilities for use by communications service providers. Rates, terms, and conditions for access to such company-attached and company-maintained facilities shall be made available consistent with the requirements of this section.

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides

1 ~~exclusive access to its company attached and company maintained fiber optic~~
2 facilities. The terms and conditions of any contract entered into under this
3 section shall include a provision specifying that, if a communications service
4 provider leases fiber-optic capacity that is not used within 180 days of entering
5 the lease, the lease terms and conditions relative to that unused capacity shall
6 terminate.

7 * * *

8 (j) A company having electric transmission or distribution structures
9 carrying voltages of 110 kV or lower may not enter into a contract with a
10 communications service provider that provides exclusive access to its
11 company-attached and company-maintained fiber-optic facilities. The terms
12 and conditions of any contract entered into under this section shall include a
13 provision specifying that, if a communications service provider leases
14 fiber-optic capacity that is not used within 180 days of entering the lease, the
15 ~~lease terms and conditions relative to that unused capacity shall terminate.~~

Sec. 10. 30 V.S.A. § 8092 is amended to read:

§ 8092. RATES; TERMS; CONDITIONS

* * *

(h)(1) A company may limit wireline attachments on electric transmission structures exclusively carrying voltages of 110 kV or higher to fiber-optic facilities attached and maintained by the company, if the company allows communications service providers to use fiber-optic facilities installed and maintained by the company and offers to install such fiber-optic facilities on such electric transmission structures where there are not sufficient facilities for use by communications service providers. Rates, terms, and conditions for

access to such company-attached and company-maintained facilities shall be made available consistent with the requirements of this section.

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

* * *

(j) A company having electric transmission or distribution structures carrying voltages of 110 kV or lower may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

1

2 * * * Telecommunications: Study on Regulatory Exemption * * *

3 Sec. 11 . TELECOMMUNICATIONS; REGULATORY EXEMPTION

4 (a) The commissioner of public service shall study the relative advantages
5 and disadvantages of permitting certain telecommunications carriers to avail
6 themselves of the regulatory exemption contained in 30 V.S.A. § 227d. In
7 particular, the commissioner shall limit his or her analysis to
8 telecommunications carriers that have incurred access line losses of greater
9 than 15 percent during the immediately preceding ten years in a service area.

The exemption would apply regardless of the number of subscriber lines the carrier has installed in the aggregate statewide and regardless of whether a competitive eligible telecommunications carrier has also been designated in the applicable service area. The commissioner shall determine the impact that this exemption would have on consumers as well as on other telecommunications carriers providing services in Vermont.

(b) The commissioner's findings and recommendations shall be submitted to the governor and the general assembly on or before December 1, 2011.

* * * Leasing or Licensing of State Land * * *

Sec. 12. 30 V.S.A. § 227e is added to read:

§ 227e. LEASING OR LICENSING OF STATE LAND; PUBLIC NOTICE

(a) Beginning July 1, 2011, state land may not be leased or licensed for the purpose of construction or installation of a *wireless* telecommunications facility, as defined in 30 V.S.A. § 8063(b) *30 V.S.A. § 248a(b)*, unless authorized by the secretary of administration pursuant to the requirements of this section. For purposes of this section, "state land" means land owned in fee or interests in land owned by the agency of natural resources. No initial lease or license, including any renewal thereof, entered into pursuant to this section shall exceed ~~20~~ *25* years.

~~(b) Prior to entering into or renewing a lease or license, the secretary shall publish notice of the proposed telecommunications facility site in one daily newspaper of general circulation in the region of the proposed site and on the website maintained by the agency of administration.~~

(b) Prior to entering into or renewing a lease or license, the secretary shall:

(1) Publish notice of the proposed telecommunications facility site in one daily newspaper of general circulation in the region of the proposed site and on the website maintained by the agency of administration; and

(2) Send by certified mail, return receipt requested, a written notice of the proposed lease or license or renewal to the legislative body of each municipality in which such leased or licensed land is located. The notice shall include a description of the land to be leased or licensed and of the proposed telecommunications facility to be sited on the land, including the facility's height and location.

1 Sec. 13. 30 V.S.A. § 227b is amended to read:

2 § 227b. WIRELESS TELECOMMUNICATIONS

 (a)(1) The secretary of administration is designated as the exclusive agent for the state of Vermont to contract for the use of state-owned buildings, structures, and land for wireless, two-way interactive telecommunications facilities. The secretary is granted the power to contract or grant a lease or license of up to 20 25 years for such buildings, structures, and land for such purposes. The provisions of this section shall apply to all state-owned buildings, structures, and land, including such property owned or managed by the department of state buildings, the agency of transportation, the department of public safety, and the agency of natural resources.

3 (2) The secretary is granted all powers necessary to carry out his or her
4 responsibilities under this section. Notwithstanding any other provision of
5 law, the powers granted to the secretary under this section relating to wireless
6 telecommunications facilities shall supersede the authority granted to any other
7 state official or agency relating to such facilities. The powers granted by this

1 section shall not affect the secretary's duty, and any duty of the facility owner,
2 to seek and obtain any applicable gubernatorial, quasi-judicial, or legislative
3 review, approval or permit required by law, including as necessary permits
4 under 10 V.S.A. chapter 151 (Act 250), local planning and zoning permits, a
5 certificate of public good under 30 V.S.A. § 248a, and legislative approval
6 under 29 V.S.A. § 166 (sale or long-term lease of state lands), 10 V.S.A.
7 § 2606 (exchange or lease of state forests and parks) or 10 V.S.A. § 2606a
8 (state-owned mountaintop use as communications sites). *A decision by the*
9 *secretary to contract or enter into or renew a lease or license for the use of a*
10 *state-owned building, structure, or land for a wireless telecommunications*
11 *facility shall have no presumptive or binding effect with respect to the facility's*
12 *compliance with the standards or criteria used in determining whether to grant*
13 *any such required approval or permit.*

14 (3) ~~The secretary shall create a work group of state officials and the~~
15 ~~private sector to assist the secretary in developing standard contracting terms~~
16 ~~and procedures, and to advise the secretary of the public interests involved in~~
17 ~~each facility siting proposal. The work group shall include at least two people~~
18 ~~who represent the interests of consumers and who do not represent~~
19 ~~telecommunications businesses or state government.~~ The secretary shall
20 consult with all affected state officials and agencies concerning each proposed
21 use of state properties for wireless telecommunications facilities to determine

1 the compatibility of the particular building, structure or parcel of land to
2 accommodate such facilities, and to determine and give due consideration to
3 the compatibility of the proposed use with the approved long-term
4 management plan for the property under consideration, but the approval of
5 such officials or agencies is not required for the secretary to exercise his or her
6 powers under this section. In the case of lands managed by the agency of
7 natural resources, the secretary shall determine that the use is consistent with
8 any management plan to which the lands are subject.

9 (b) ~~On or before October 1, 1996, the~~ The secretary of administration shall
10 develop a standard contract and a standard contracting procedure for the use of
11 state-owned buildings and land for wireless telecommunications facilities. The
12 contract and contracting procedure shall provide for:

13 (1) criteria and procedures for making a wireless facility development
14 proposal;

15 (2) final consideration of each completed facility development proposal
16 within 60 days of the proposal's submission in the manner prescribed by the
17 secretary;

18 (3) appropriate public benefits as compensation for the use of state
19 properties, including public use of increased telecommunications capacity,
20 direct compensation, or other public benefits;

(4) in the event that a wireless telecommunications facility is abandoned,
the restoration of the site to a natural state within 12 months following

~~abandonment. For the purpose of this subdivision, "natural state" does not require the removal of equipment and material, other than hazardous material as defined under 10 V.S.A. § 6602(16), buried more than 12 inches below natural grade if the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. For the purpose of this subdivision, "natural state" does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law;~~

- 1 (5) encouragement of competition in wireless telecommunications,
- 2 including requirements for open access for competing providers;
- 3 (6) encouragement of the use of advanced technology, and the
- 4 collocation of facilities whenever feasible, in order that the number of wireless
- 5 telecommunications facilities can be minimized or reduced;
- 6 (7) terms and conditions requiring certification by the owners of
- 7 wireless telecommunications facilities on state-owned buildings, structures, or
- 8 land that such facilities have been installed, operated, and maintained in
- 9 accordance with applicable federal and state safety standards; ~~and~~
- 10 (8) the retaining of a portion of revenues accruing from the lease of
- 11 state-owned buildings, structures or lands, as determined by the secretary of
- 12 administration, by departments with management responsibility for such
- 13 buildings, structures or lands in order to cover operating and maintenance costs
- 14 associated with two-way, interactive telecommunications facilities.

1 (c) By ~~January 15, 1997~~ January 15, 2012, and by January 15 in the next
2 succeeding three years, the secretary of administration shall report to the chairs
3 of the house commerce committee and the senate finance committee
4 concerning the secretary's activities under this section.

5 (d) In the event of a conflict between the provisions of this section and any
6 other provision of law relating to the use of state-owned buildings, structures
7 and land, including the provisions of section 165 of Title 29, and section 26a of
8 Title 19, the provisions of this section shall control.

9 * * * Local Land Use Bylaws; Exemptions * * *

10 Sec. 14. 24 V.S.A. § 4413 is amended to read:

11 § 4413. LIMITATIONS ON MUNICIPAL BYLAWS

12 * * *

13 (f) This section shall apply in every municipality, notwithstanding any
14 existing bylaw to the contrary.

15 * * *

16 (h)(1) A bylaw under this chapter shall not regulate any of the following:

17 (A) An ancillary improvement that does not exceed a footprint of 200
18 square feet and a height of 10 feet.

19 (B) The following improvements associated with the construction or
20 installation of a communications line.

1 (i) The attachment of a new or replacement cable or wire to an
2 existing structure.

3 (ii) The replacement of an existing pole with a new pole that is not
4 more than ten feet taller than the pole it replaces.

5 (2) For purposes of this subsection:

6 (A) "Ancillary improvement" shall have the same definition as is
7 established in 30 V.S.A. § 248a(b).

8 (B) "Communications line" means a wireline or fiber-optic cable
9 communications facility that transmits and receives signals to and from a local,
10 state, national, or international network used primarily for two-way
11 communications for commercial, industrial, municipal, county, or state
12 purposes.

** * * Local Land Use Bylaws; Exemptions * * **

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

** * **

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement that does not exceed a footprint of 300
square feet and a height of 10 feet.

(B) The following improvements associated with the construction or
installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an
existing electrical distribution or communications distribution pole.

(ii) The replacement of an existing electrical distribution or
communications distribution pole with a new pole, so long as the new pole is
not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached. No ordinance under this section may regulate an improvement that

is exempt from regulation under subdivision 4413(h) (telecommunications; ancillary improvements of 300 square feet or less; improvements associated with communications lines) of this title.

* * *

* * * *Deployment Plans* * * *

Sec. 14b. 3 V.S.A. § 2222b is added to read:

§ 2222b. TELECOMMUNICATIONS; COORDINATION AND PLANNING

(a) The secretary of administration or designee shall be responsible for the coordination of telecommunications initiatives among executive branch agencies, departments, and offices.

(b) In furtherance of the goals set forth in 30 V.S.A. § 8060(b), the secretary shall have the following duties:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for provision of these services to the unserved areas;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to formulate an action plan to accomplish the goals of universal availability of broadband and mobile telecommunications services by the end of the year 2013.

(4) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(5) to support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) through the department of innovation and information, to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;

(7) to review all financial transactions, statements, and contracts of the Vermont telecommunications authority established under 30 V.S.A. § 8061; and

(8) to receive all technical and administrative assistance as deemed necessary by the secretary of administration.

(c) Deployment tracking.

(1) Not later than 30 days of the effective date of this act, all persons proposing to construct or install Vermont cables, wires, or telecommunications facilities as defined in 30 V.S.A. § 248a(b)(1) shall file plans with the secretary if the construction or installation relates to the deployment of broadband infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, or by funds granted or loaned by the state of Vermont or one of its instrumentalities.

(2) The plans filed pursuant to subdivision (1) of this subsection shall include data identifying the projected coverage area, the projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities, and shall be updated every 90 days.

(3) The secretary shall use the information provided pursuant to this subsection in performing the duties set forth in subsection (b) of this section.

(4) The secretary shall keep confidential the plans submitted to it under this subsection except that, pursuant to a nondisclosure agreement, the secretary may disclose the information to the Vermont Center for Geographic Information created under 10 V.S.A. § 122 or to some other person or entity for the purpose of aggregating the information. Information so disclosed shall remain confidential.

(5) The secretary may request voluntary disclosure of information such as that set forth in subdivision (2) of this subsection regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. The secretary may enter into a nondisclosure agreement with respect to any such voluntary disclosures and the information disclosed pursuant thereto shall remain confidential.

(6) The secretary may publicly disclose aggregated information based upon the information provided pursuant to this subsection.

(7) The confidentiality requirements of subdivisions (4) and (5) 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. 14c. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(b) Planning and zoning chapter appeals.

(1) Within 30 days of the date of the act or decision, an interested person, as defined in 24 V.S.A. § 4465, who has participated as defined in 24 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter may appeal to the environmental division an act or decision made under that chapter by a board of adjustment, a planning commission, or a development review board; provided, however, that decisions of a development review board under 24 V.S.A. § 4420 with respect to local Act 250 review of municipal impacts are not subject to appeal but shall serve as presumptions under chapter 151 of this title.

(2) Notwithstanding subdivision (1) of this subsection, an interested person may appeal an act or decision under 24 V.S.A. chapter 117 if, upon motion filed by the person no later than the deadline for filing a statement of questions on appeal, the environmental judge determines that:

(A) there was a procedural defect which prevented the person from obtaining interested person status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of interested person status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(d) Requirement that aggrieved Act 250 parties participate before the district commission.

(1) No aggrieved person may appeal an act or decision that was made by a district commission unless the person was granted party status by the district commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the district commission, and retained party status at the end of the district commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status.

(2) Notwithstanding subdivision (d)(1) of this section, an aggrieved person may appeal an act or decision of the district commission if, upon motion filed by the person no later than the deadline for filing a statement of questions on appeal, the environmental judge determines that:

(A) *there was a procedural defect which prevented the person from obtaining party status or participating in the proceeding;*

(B) *the decision being appealed is the grant or denial of party status;*
or

(C) *some other condition exists which would result would result in manifest injustice if the person's right to appeal was disallowed.*

* * *

*Sec. 14d. PROSPECTIVE REPEALS; EXEMPTIONS FROM
MUNICIPAL BYLAWS AND ORDINANCES*

Effective July 1, 2014:

(1) 24 V.S.A. § 4413(h) (limitations on municipal bylaws) shall be repealed; and

(2) 24 V.S.A. § 2291(19) (municipal ordinances; wireless telecommunications facilities) is amended to read:

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more

than 12 feet above the roof of that portion of the building to which they are attached. No ordinance under this section may regulate an improvement that is exempt from regulation under subdivision 4413(h) (telecommunications; ancillary improvements of 300 square feet or less; improvements associated with communications lines) of this title.

* * * VTA; Board Reorganization * * *

Sec. 15. 30 V.S.A. § 8060 is amended to read:

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

(1) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and lifelong learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

~~(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.~~

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state; but significant gaps remain. Nevertheless, significant gaps remain in 99 target communities for broadband service, and in community hubs and along the routes which connect them for mobile telecommunications service.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is

1 necessary to extend and complete broadband coverage in the state, and to
2 ensure that Vermont maintains a telecommunications infrastructure that allows
3 residents and businesses to compete fairly in the national and global economy.

4 (4) When such partnerships and collaborations fail to achieve the goal of
5 providing high-quality broadband access and service to all areas and
6 households, or when some areas of the state fall behind significantly in the
7 variety and quality of services readily available in the state, it is necessary for
8 an authority of the state to support and facilitate the construction of
9 infrastructure and access to broadband service through financial and other
10 incentives.

11 (5) Small broadband enterprises now offering broadband service in
12 Vermont have limited access to financial capital necessary for expansion of
13 broadband service to unserved areas of the state. The general assembly
14 recognizes these locally based broadband providers for their contributions to
15 date in providing broadband service to unserved areas despite the limitations
16 on their financial resources.

17 (6) The universal availability of adequate mobile telecommunications
18 and broadband services promotes the general good of the state.

19 (7) Vermonters should be served by broadband infrastructure that, to the
20 extent practical and cost-effective, uses the best commercially available

1 technology and does not involve widespread installation of technology that
2 becomes outmoded within a short period after installation.

3 (b) Therefore, it is the goal of the general assembly to ensure:

4 (1) that all residences and business in all regions of the state have access
5 to affordable broadband services not later than the end of the year ~~2010~~ 2013,
6 and that this goal be achieved in a manner that, to the extent practical and
7 cost-effective, does not negatively affect the future installation of the best
8 commercially available broadband technology or result in widespread
9 installation of technology that becomes outmoded within a short period after
10 installation.

11 (2) the ubiquitous availability of mobile telecommunication services
12 including voice and high-speed data throughout the state by the end of the year
13 ~~2010~~ 2013.

14 ~~(3) the investment in telecommunications infrastructure in the state~~
15 ~~which will support the best available and economically feasible service~~
16 ~~capabilities.~~

*(3) the investment in telecommunications infrastructure in the state
which will support that creates or completes the network for service providers
to create last-mile connection to the home or business and supports the best
available and economically feasible service capabilities.*

17 (4) that telecommunications and broadband infrastructure in all areas of
18 the state is continuously upgraded to reflect the rapid evolution in the
19 capabilities of available mobile telecommunications and broadband

1 technologies, and in the capabilities of mobile telecommunications and
2 broadband services needed by persons, businesses, and institutions in the state.

3 (5) the most efficient use of both public and private resources through
4 state policies by encouraging the development of open access
5 telecommunications infrastructure that can be shared by multiple service
6 providers.

7 ~~Sec. 16. 30 V.S.A. § 8061 is amended to read:~~

8 ~~§ 8061. ESTABLISHMENT OF AUTHORITY; ORGANIZATION~~

9 (a) ~~The Vermont telecommunications authority is hereby created and~~
10 ~~established as a body corporate and politic and a public instrumentality of the~~
11 ~~state. The exercise by the authority of the powers conferred upon it in this~~
12 ~~chapter constitutes the performance of essential governmental functions.~~

13 (b) ~~The authority shall have a board of directors of ~~14~~ five members~~
14 ~~selected as follows:~~

15 (1) ~~The state treasurer or his or her designee;~~

16 (2) ~~The secretary of administration or his or her designee; and~~

17 (3) ~~The manager of the Vermont economic development authority or his~~
18 ~~or her designee;~~

19 (4) ~~Two at-large members~~ One member of the house of representatives
20 ~~appointed by the speaker of the house, who may not be members of the general~~
21 ~~assembly at the time of appointment,~~

~~(5)(4) Two at large members One member of the senate appointed by the committee on committees of the senate, who may not be members of the general assembly at the time of appointment; and~~

~~(6)(5) Two One at-large members member appointed by the governor, who may not be employees an employee or officers officer of the state at the time of appointment; and~~

~~(7) Two at-large members appointed jointly by the governor, the speaker of the house, and the president pro tem of the senate, who shall be chair and vice chair of the board of directors, and who may not be members of the general assembly or employees or officers of the state at the time of appointment.~~

(c) The authority's powers are vested in the board of directors, and a quorum shall consist of ~~six~~ three members. No action of the authority shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least ~~five~~ three members vote in favor of the action.

(d) ~~In making appointments of at large members and the chair, the appointing authorities shall give consideration to citizens of the state with knowledge of telecommunications technology, telecommunications regulatory law, transportation rights of way and infrastructure, finance, and environmental permitting. However, the six at large members, the chair, and~~

~~the vice chair may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in kind or financial support from the authority. The six at large members, the chair and the vice chair shall serve terms of four years beginning July 1 of the year of appointment. However, two of the at large members first appointed by the speaker, and two of the at large members first appointed by the committee on committees shall serve an initial term of two years. Any vacancy occurring among the at large members, the chair or the vice chair shall be filled by the respective appointing authority and be filled for the balance of the unexpired term. The legislative and at-large members shall serve terms of two years beginning July 1 of the year of appointment. Vacancies shall be filled by the respective appointing bodies for the balance of the unexpired term. One of the five members shall be appointed chair of the board of directors jointly by the governor, the speaker of the house, and the president pro tempore of the senate. A member may be reappointed.~~

(e) The authority shall hire and employ an executive director who shall serve as the authority's chief administrative officer and shall direct and supervise the authority's administrative affairs and technical activities in accordance with any rules, regulations, and policies set forth by the authority.

~~In addition to any other duties, the executive director shall:~~

- 1 ~~(1) Attend all meetings of the authority, act as its secretary, and keep~~
2 ~~minutes of its proceedings;~~
- 3 ~~(2) Approve all accounts of the authority, including but not limited to~~
4 ~~accounts for salaries, per diems, and allowable expenses of any employee or~~
5 ~~consultant thereof and expenses incidental to the operation of the authority;~~
- 6 ~~(3) Make an annual report to the authority documenting the actions of~~
7 ~~the authority and such other reports as the authority may request;~~
- 8 ~~(4) Perform such other duties as may be directed by the authority in the~~
9 ~~carrying out of the purposes of this chapter.~~
- 10 ~~(f) Except for those members otherwise regularly employed by the state,~~
11 ~~the compensation of the authority's members shall be the same as that~~
12 ~~provided by subsection 32 V.S.A. § 1010(a) of Title 32. All members of the~~
13 ~~authority, including those members otherwise regularly employed by the state,~~
14 ~~shall receive their actual and necessary expenses when away from home or~~
15 ~~office upon their official duties.~~

Sec. 16. 30 V.S.A. § 8061 is amended to read:

§ 8061. ESTABLISHMENT OF AUTHORITY; ORGANIZATION

(a) The Vermont telecommunications authority is hereby created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The authority shall have a board of directors of ~~11~~ nine members selected as follows:

- (1) The state treasurer or his or her designee;*
- (2) The secretary of administration or his or her designee;*

~~(3) The manager of the Vermont economic development authority or his or her designee;~~

~~(4) Two at-large members One member of the house of representatives appointed by the speaker of the house, who may not be members of the general assembly at the time of appointment;~~

~~(5)(4) Two at-large members One member of the senate appointed by the committee on committees of the senate, who may not be members of the general assembly at the time of appointment; and~~

~~(6)(5) Two Five at-large members appointed by the governor, who may not be employees or officers of the state at the time of appointment; and~~

~~(7) Two at large members appointed jointly by the governor, the speaker of the house, and the president pro tem of the senate, who shall be chair and vice chair of the board of directors, and who may not be members of the general assembly or employees or officers of the state at the time of appointment.~~

(c) The authority's powers are vested in the board of directors, and a quorum shall consist of ~~six~~ five members. No action of the authority shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least ~~five~~ four members vote in favor of the action. The governor, the speaker of the house, and the president pro tempore of the senate shall jointly select, from among the at-large members, a chair and vice chair, who may not be members of the general assembly or employees or officers of the state at the time of the appointment.

(d) In making appointments of at-large and legislative members and the chair, the appointing authorities shall give consideration to citizens of the state with knowledge of telecommunications technology, telecommunications regulatory law, transportation rights-of-way and infrastructure, finance, and environmental permitting. However, the ~~six~~ legislative and five at-large members, ~~the chair, and the vice chair~~ may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in-kind or financial support from the authority. ~~The six at large members, the chair and the vice chair shall serve terms of four years beginning July 1 of the year of appointment. However, two of the at large members first appointed by the speaker, and two of the at large members first appointed by the committee on committees shall serve an initial term of two years. Any vacancy occurring among the at large members, the chair or the vice chair shall be filled by the respective appointing authority and be filled for the balance of the unexpired term~~ The conflict of interest provision in this subsection shall not be construed to disqualify a member who has ownership in a mutual fund, exchange traded fund, pension plan, or

similar entity that owns shares in such enterprises as part of a broadly diversified portfolio. In addition, at least one at-large member shall represent an area of Vermont determined by the authority to be unserved by broadband at the time of his or her appointment or reappointment, and at least one at-large member shall represent an area of Vermont determined by the authority to be unserved by mobile telecommunications at the time of his or her appointment or reappointment. The legislative and at-large members shall serve terms of two years beginning February 1 in odd-numbered years, and until their successors are appointed and qualified. However, three of the five at-large members first appointed by the governor shall serve an initial term of three years. Vacancies shall be filled by the respective appointing bodies for the balance of the unexpired term. A member may be reappointed for up to three consecutive terms. Upon expiration of a term, and for one year from the date of such expiration, a former board member shall not obtain employment in Vermont with an enterprise that provides broadband or cellular service.

(e) The authority shall hire and employ an executive director who shall serve as the authority's chief administrative officer and shall direct and supervise the authority's administrative affairs and technical activities in accordance with any rules, regulations, and policies set forth by the authority. In addition to any other duties, the executive director shall:

(1) Attend all meetings of the authority, act as its secretary, and keep minutes of its proceedings;

(2) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the authority;

(3) Make an annual report to the authority documenting the actions of the authority and such other reports as the authority may request;

(4) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter.

(f) Except for those members otherwise regularly employed by the state, the compensation of the authority's members shall be the same as that provided by ~~subsection 32~~ V.S.A. § 1010(a) of Title 32. All members of the authority, including those members otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

Sec. 16a. VTA BOARD; REORGANIZATION

Upon the effective date of this act, the terms of office of the existing members of the board of directors of the Vermont telecommunications

authority shall terminate, and new members, for the term commencing in 2011, shall be appointed as provided in this act.

1 Sec. 17. 30 V.S.A. § 8062 is amended to read:

2 § 8062. PURPOSE; POWERS AND DUTIES

3 (a) To achieve the goals under subsection 8060(b) of this title, the authority
4 is directed:

5 (1) from information reasonably available after public notice to and
6 written requests made of mobile telecommunications and broadband service
7 providers, to develop and maintain an inventory of locations at which mobile
8 telecommunications and broadband services are not available within the state,
9 develop and maintain an inventory of infrastructure that is available or
10 reasonably likely to be available to support provision of services to areas
11 unserved, and develop and maintain an inventory of infrastructure necessary
12 for provision of these services to the areas unserved;

13 (2) to identify the types and locations of infrastructure and services
14 needed to accomplish the goals of this chapter;

15 (3) to coordinate the agencies of the state to make public resources
16 available to support the extension of mobile telecommunications and
17 broadband infrastructure and services to all unserved areas;

18 ~~(4) to coordinate and establish public-private partnerships to extend~~
19 ~~availability of mobile telecommunications and broadband services, and to~~

1 ~~promote development of the infrastructure that enables the provision of these~~
2 ~~services;~~

3 ~~(5)(4) to support and facilitate local initiatives to extend the availability~~
4 ~~of mobile telecommunications and broadband services, and to promote~~
5 ~~development of the infrastructure that enables the provision of these services;~~

6 ~~(6)(5) to provide resources to local, regional, public and private entities~~
7 ~~in the form of loans, grants, and other incentives funded through bonded~~
8 ~~capital and other resources;~~

9 ~~(7) to solicit and consider input from local municipal authorities,~~
10 ~~districts designated by the federal economic development administration,~~
11 ~~regional planning commissions, and metropolitan planning organizations on~~
12 ~~specific projects the authority plans to undertake; and~~

13 ~~(8)(6) to inventory and assess the potential to use federal radio~~
14 ~~frequency licenses held by instrumentalities of the state to enable broadband~~
15 ~~service in unserved areas of the state; take whatever steps are consistent with~~
16 ~~the powers granted the authority under this chapter to promote the use of those~~
17 ~~licensed radio frequencies for that purpose; and recommend to the general~~
18 ~~assembly any further legislative measures with respect to ownership,~~
19 ~~management, and utilization of these licenses as would promote the general~~
20 ~~good of the state; and~~

1 ~~(9) to the extent not inconsistent with the goals of this chapter, to utilize~~
2 ~~existing buildings and structures, historic or otherwise, as sites for~~
3 ~~visually neutral placement of mobile telecommunications and wireless~~
4 ~~broadband antenna facilities.~~

5 (b) The authority shall have the following powers, which shall be exercised
6 to further the authority's purpose, and shall have all other powers necessary to
7 carry out the duties imposed on the authority by law:

8 ~~(1) to establish partnerships and contracts with providers of~~
9 ~~telecommunications services and related facilities to serve unserved people and~~
10 ~~areas of the state; and to provide financial and other assistance to providers~~
11 ~~who agree in return to provide mobile telecommunications or broadband~~
12 ~~services to unserved people and areas of the state; and to facilitate directly or~~
13 ~~indirectly the efforts of other entities to advance the availability of mobile~~
14 ~~voice and high-speed data or broadband services.~~

15 ~~(2) to provide financial assistance in the form of loans, grants,~~
16 ~~guarantees, other financial instruments, or, in accordance with section 8064 of~~
17 ~~this title, to issue bonds backed by project revenues, the state, or its political~~
18 ~~subdivisions, or both, for the purpose of building infrastructure capable of~~
19 ~~delivering mobile telecommunications and broadband services to all~~
20 ~~Vermonters;~~

~~(3)(2) to consult, contract, or partner with the Vermont economic~~

~~development authority and the Vermont municipal bond bank to provide
financial assistance for purposes authorized by this chapter;~~

~~(4)(3) to coordinate access to and pursue regional and local revolving
loan funding and all state, federal, and private funding that is available for
telecommunications infrastructure, including financial assistance that may be
available to rural economic area partnership (REAP) zones, as designated by
the U.S. Department of Agriculture and to contract with financial assistance
providers;~~

~~(5)(4) to receive and accept grants, gifts, loans, or contributions from
any source subject to the provisions of 32 V.S.A. § 5.~~

~~(6) to incorporate one or more nonprofit corporations in Vermont to
fulfill the goals of this chapter. Such corporations shall be empowered to
borrow money and to receive and accept gifts, grants, or contributions from
any source, subject to the provisions of 32 V.S.A. § 5. The board of directors
of any nonprofit corporation created under this subsection shall be the board of
directors of the authority. The corporation shall be organized and operate
under the nonprofit corporation laws of the state of Vermont. The authority
may contract with the corporation to provide staff and management needs of
the corporation;~~

1 ~~(7) to aggregate and broker access at reduced prices to services and~~
2 ~~facilities required to provide wireless telecommunications and broadband~~
3 ~~services; and to waive or reduce state fees for access to state-owned~~
4 ~~rights-of-way in exchange for comparable value to the state, unless payment~~
5 ~~for use is otherwise required by federal law;~~

6 ~~(8) to own, acquire, sell, trade, and lease equipment, facilities, and other~~
7 ~~infrastructure that could be accessed and used by multiple service providers,~~
8 ~~the state and local governments, including fiber optic cables, towers, shelters,~~
9 ~~easements, rights of way, and wireless spectrum of frequencies; provided that~~
10 ~~any agreement by the authority to sell infrastructure that is capable of use by~~
11 ~~more than one service provider shall contain conditions that will ensure~~
12 ~~continued shared use or co-location at reasonable rates;~~

13 ~~(9) in collaboration with the Vermont municipal bond bank, to act as~~
14 ~~agent and advisor for municipalities that wish to offer municipally backed~~
15 ~~financial assistance, consistent with chapter 53 of Title 24, to develop~~
16 ~~telecommunications infrastructure or services in their communities;~~

17 ~~(10) to apply for and obtain required permits for the construction of~~
18 ~~telecommunications infrastructure;~~

19 ~~(11) in collaboration with the agency of administration, to lead the~~
20 ~~management of marketing of state properties to encourage and expedite~~
21 ~~collocation of infrastructure;~~

1 ~~(12) to consult with agencies and departments on establishing charges or~~
2 ~~payments for use by wireless telecommunications and broadband service~~
3 ~~providers of state property, easements, and rights of way to the extent such~~
4 ~~charges or payments are required by law, and establish the criteria for waiver~~
5 ~~of such charges or payments when providers offer to furnish comparable value~~
6 ~~to the state to meet the public good;~~

7 ~~(13)(5) to sue and be sued in its own name and plead and be impleaded;~~

8 ~~(14)(6) to administer its own funds and to invest or deposit funds which~~
9 ~~are not needed currently to meet the obligations of the authority; and~~

10 ~~(15)(7) to borrow money and give other evidence of indebtedness or~~
11 ~~obligations and security consistent with the authority's purpose and needs.~~

12 (c) Nothing in this chapter shall be construed to grant power to the
13 ~~authority to offer the sale of telecommunications services to the public.~~

Sec. 17. 30 V.S.A. § 8062 is amended to read:

§ 8062. PURPOSE; POWERS AND DUTIES

(a) To achieve the goals under subsection 8060(b) of this title, the authority is directed:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to areas unserved, and develop and maintain an inventory of infrastructure necessary for provision of these services to the areas unserved;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

~~(3) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;~~

~~(4) to coordinate and establish public-private partnerships to extend availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(5) to support and facilitate local initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(6) to provide resources to local, regional, public, and private entities in the form of loans, grants, and other incentives funded through bonded capital and other resources;~~

~~(7) to solicit and consider input from local municipal authorities, districts designated by the federal economic development administration, regional planning commissions, and metropolitan planning organizations on specific projects the authority plans to undertake;~~

~~(8)(2) to inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the state to enable broadband service in unserved areas of the state; take whatever steps are consistent with the powers granted the authority under this chapter to promote the use of those licensed radio frequencies for that purpose; and recommend to the general assembly any further legislative measures with respect to ownership, management, and utilization of these licenses as would promote the general good of the state; and~~

~~(9) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities~~

(3) to construct and install, or cause to be constructed and installed, fiber optic and wireless infrastructure through grants to providers and through direct investments in infrastructure to be owned by the authority, in areas needed to meet the state's objectives as determined by the secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3), provided that direct investment is not undertaken in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service; and

(4) to provide technical and such other support as the secretary of administration deems necessary.

(b) The authority shall have the following powers, which shall be exercised to further the authority's purpose, and shall have all other powers necessary to carry out the duties imposed on the authority by law:

(1) to ~~establish partnerships and~~ enter into contracts with providers of telecommunications services and related facilities to serve unserved people and areas of the state; and to provide financial and other assistance to providers who agree in return to provide mobile telecommunications or broadband services to unserved people and areas of the state; and to facilitate directly or indirectly the efforts of other entities to advance the availability of mobile voice and high speed data or broadband services.

(2) to provide financial assistance in the form of ~~loans, grants, guarantees, other financial instruments,~~ or, in accordance with section 8064 of this title, to issue bonds backed by project revenues, the state; or its political subdivisions; or both; for the purpose of building infrastructure capable of delivering mobile telecommunications and broadband services to all Vermonters;

(3) to consult, contract, or partner with the Vermont economic development authority and the Vermont municipal bond bank to provide financial assistance for purposes authorized by this chapter;

~~(4) to coordinate access to and pursue regional and local revolving loan funding and all state, federal, and private funding that is available for telecommunications infrastructure, including financial assistance that may be available to rural economic area partnership (REAP) zones, as designated by the U.S. Department of Agriculture and to contract with financial assistance providers;~~

~~(5)~~(4) to receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5;

(6)(5) to incorporate one or more nonprofit corporations in Vermont to fulfill the goals of this chapter. Such corporations shall be empowered to borrow money and to receive and accept gifts, grants, or contributions from any source, subject to the provisions of 32 V.S.A. § 5, subject to the limitations imposed by law on the authority. The board of directors of any nonprofit corporation created under this subsection shall be the board of directors of the authority. The corporation shall be organized and operate under the nonprofit corporation laws of the state of Vermont. The authority may contract with the corporation to provide staff and management needs of the corporation;

~~(7) to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state owned~~

~~rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;~~

~~(8)(6) to construct, install, own, acquire, sell, trade, and lease equipment, facilities, and other infrastructure that could be accessed and used by multiple service providers, the state and local governments, including fiber optic cables, towers, shelters, easements, rights of way, and wireless spectrum of frequencies; provided that any agreement by the authority to sell infrastructure that is capable of use by more than one service provider shall contain conditions that will ensure continued shared use or co-location at reasonable rates, and provided that the proposed activity will not be in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service;~~

~~(9) in collaboration with the Vermont municipal bond bank, to act as agent and advisor for municipalities that wish to offer municipally backed financial assistance, consistent with chapter 53 of Title 24, to develop telecommunications infrastructure or services in their communities;~~

~~(10)(7) to apply for and obtain required permits for the construction of telecommunications infrastructure;~~

~~(11)(8) in collaboration with the agency of administration, to lead the management of marketing of state properties to encourage and expedite collocation of infrastructure;~~

~~(12)(9) to consult with agencies and departments on establishing charges or payments for use by wireless telecommunications and broadband service providers of state property, easements, and rights-of-way to the extent such charges or payments are required by law, and establish the criteria for waiver of such charges or payments when providers offer to furnish comparable value to the state to meet the public good;~~

~~(13)(10) to sue and be sued in its own name and plead and be impleaded;~~

~~(14)(11) to administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority; and~~

~~(15)(12) to borrow money and give other evidence of indebtedness or obligations and security consistent with the authority's purpose and needs; and~~

~~(13) to pursue route and site identification for fiber optic and wireless infrastructure.~~

~~(c) Nothing in this chapter shall be construed to grant power to the authority to offer the sale of telecommunications services to the public.~~

1 ~~Sec. 18. 30 V.S.A. § 8063 is amended to read:~~

2 § 8063. INTERAGENCY COOPERATION AND ASSISTANCE

3 (a) Other departments and agencies of state government shall assist and
4 cooperate with the authority and shall make available to it information and data
5 as needed to assist the authority in carrying out its duties. The secretary of
6 administration shall establish protocols and agreements among the authority
7 and departments and agencies of the state for this purpose. Nothing in this
8 section shall be construed to waive any privilege or protection otherwise
9 afforded to the data and information under exemptions to the public records act
10 or under other laws due solely to the fact that the information or data is shared
11 with the authority pursuant to this section.

12 (b) ~~With the consent of the governor, and under terms and conditions of~~
13 ~~transfer approved by the governor, a state agency shall transfer ownership and~~
14 ~~control to the authority of the agency's interest in any telecommunications~~
15 ~~facility designated by the authority as appropriate to assist the authority in~~
16 ~~meeting its statutory purposes. "Telecommunications facility" includes~~
17 ~~antennae, towers and other support structures, wires and cables, and other~~
18 ~~equipment.~~

19 (c) To the extent that the authority issues loans, it shall consult with the
20 Vermont economic development authority to ensure that the lending activities
21 and programs of each are coordinated and are not in competition. The

~~authority shall, through contract or agreement, engage the assistance of the~~
Vermont economic development authority in planning and administering
lending activities and in evaluating credit worthiness of the borrower for
purposes of this chapter.

~~(d)(c)~~ The authority shall also strive to identify, consult with, and
coordinate lending programs with the administrators of local and regional
revolving loan funds in order to leverage the lending capacity of the authority
and the regional and local funds, and to ensure that the lending activities of the
authority and the revolving loan funds are not in competition.

~~(e) No instrumentality of the state shall sell, lease, or otherwise divest itself
of ownership or control of radio frequency spectrum without prior notice to
and approval of the authority.~~

Sec. 18. 30 V.S.A. § 8063 is amended to read:

§ 8063. INTERAGENCY COOPERATION AND ASSISTANCE

(a) Other departments and agencies of state government shall assist and cooperate with the authority and shall make available to it information and data as needed to assist the authority in carrying out its duties. The secretary of administration shall establish protocols and agreements among the authority and departments and agencies of the state for this purpose. Nothing in this section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemptions to the public records act or under other laws due solely to the fact that the information or data is shared with the authority pursuant to this section.

~~*(b) With the consent of the governor, and under terms and conditions of transfer approved by the governor, a state agency shall transfer ownership and control to the authority of the agency's interest in any telecommunications facility designated by the authority as appropriate to assist the authority in meeting its statutory purposes. "Telecommunications facility" includes*~~

~~antennae, towers and other support structures, wires and cables, and other equipment.~~

~~(c) To the extent that the authority issues loans, it shall consult with the Vermont economic development authority to ensure that the lending activities and programs of each are coordinated and are not in competition. The authority shall, through contract or agreement, engage the assistance of the Vermont economic development authority in planning and administering lending activities and in evaluating credit worthiness of the borrower for purposes of this chapter.~~

~~(d) The authority shall also strive to identify, consult with, and coordinate lending programs with the administrators of local and regional revolving loan funds in order to leverage the lending capacity of the authority and the regional and local funds, and to ensure that the lending activities of the authority and the revolving loan funds are not in competition.~~

~~(e) No instrumentality of the state shall sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without prior notice to and approval of the authority general assembly.~~

1 ~~Sec. 19. 30 V.S.A. § 8071 is amended to read:~~

2 ~~§ 8071. ANNUAL REPORTS; AUDIT~~

3 ~~(a) On or before the last day of January of each calendar year, the authority~~
4 ~~shall submit a report of its activities for the preceding fiscal year to the~~
5 ~~governor and to the general assembly. Each report shall set forth a complete~~
6 ~~operating and financial statement covering its operations during the year. The~~
7 ~~authority shall cause an audit of its books and accounts to be made at least~~
8 ~~once in each year by certified public accountants; the cost shall be considered~~
9 ~~an expense of the authority and a copy shall be filed with the state treasurer.~~

10 ~~(b) The auditor of accounts of the state and his or her duly authorized~~
11 ~~representatives may at any time examine the accounts and books of the~~

1 ~~authority including its receipts, disbursements, contracts, sinking funds,~~
2 ~~investments, and any other matters relating to its financial statements.~~

Sec. 19. 30 V.S.A. § 8071 is amended to read:

§ 8071. QUARTERLY AND ANNUAL REPORTS; AUDIT

(a) On or before the last day of January of each calendar year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. Each report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants; the cost shall be considered an expense of the authority and a copy shall be filed with the state treasurer. Audits performed by a public accountant under this section shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements.

(b) The auditor of accounts of the state and his or her duly authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, sinking funds, investments, and any other matters relating to its financial statements.

(c) Quarterly Reports. Within 30 days of the end of each quarter, the authority shall, in addition to any other reports required under this section, submit a report of its activities for the preceding quarter to the secretary of administration which shall include the following:

(1) A description of all authority activities to develop or facilitate development of telecommunications infrastructure that furthers the objectives of this chapter.

(2) Financial statements of the authority, a summary of expenditures by the authority since inception, and a forecast of expenditures.

(3) A summary of any financial commitments made by the authority.

(4) A list and summary of all contracts and agreements entered into by the authority, and a list and summary of any rail right-of-way agreements entered into by the authority, including any waivers of charges for comparable value to the state granted under 19 V.S.A. § 26a.

(5) A current business plan for the authority, including an explanation of significant changes subsequent to the most recent previous report.

(6) Identification of the impact of its activity on existing business providers and efforts taken by the authority to avoid direct or indirect competition with existing providers.

(d) The authority shall include in the annual report required under subsection (a) of this section a summary of all the information quarterly reported to the secretary of administration under subsection (c) of this section, as well as a summary of any and all instances in which service providers that have entered into contracts or binding commitments with the authority have materially defaulted, been unable to fulfill their commitments, or have requested or been granted relief from contractual or binding commitments.

1 Sec. 20. 30 V.S.A. § 8072 is amended to read:

2 ~~§ 8072. ANNUAL OVERSIGHT REPORTS~~

3 ~~(a) In addition to the annual and audit reports required by section 8071 of~~
4 ~~this title, the authority shall provide annual oversight reports to the general~~
5 ~~assembly on or before January 1 each year. Each annual oversight report shall~~
6 ~~contain:~~

7 ~~(1) An inventory of the locations within the state in which mobile~~
8 ~~telecommunications and broadband service are currently available.~~

9 ~~(2) A report of the progress made to date by the authority in developing~~
10 ~~its capabilities to undertake or sponsor projects that expand the availability of~~
11 ~~mobile telecommunications and broadband service.~~

12 ~~(3) A projected outlook on progress by the authority, including:~~

13 ~~(A) An assessment of the authority's capabilities to perform the~~
14 ~~powers granted the authority, and to contribute to the improvement of~~
15 ~~broadband service availability and mobile telecommunications service~~
16 ~~coverage in the state; and~~

1 ~~(B) An assessment of the foreseeable extent of broadband service~~
2 ~~availability and mobile telecommunications service coverage in the state.~~

3 ~~(4) A summary of the status and results of any competitive solicitation~~
4 ~~processes undertaken or planned for the purpose of increasing broadband~~
5 ~~service availability and mobile telecommunications coverage in the state,~~
6 ~~including:~~

7 ~~(A) an assessment of the level of interest among potential service~~
8 ~~providers;~~

9 ~~(B) a summary of the numbers and types of entities participating;~~

10 ~~(C) a description of measures taken or under consideration by the~~
11 ~~authority to enhance the level of interest among potential bidders; and~~

12 ~~(D) terms of any arrangements entered between the authority and~~
13 ~~service providers.~~

14 ~~(5) A description of all authority activities to develop or facilitate~~
15 ~~development of telecommunications infrastructure that furthers the objective of~~
16 ~~this chapter.~~

17 ~~(6) Financial statements of the authority, a summary of expenditures by~~
18 ~~the authority since inception, and a forecast of expenditures.~~

19 ~~(7) A summary of any financial commitments made by the authority.~~

20 ~~(8) A list and summary of all contracts and agreements entered into by~~
21 ~~the authority, and a list and summary of any rail right-of-way agreements~~

1 entered into by the authority including any waivers of charges for comparable
2 value to the state granted under 19 V.S.A. § 26a.

3 (9) ~~A summary of any and all instances in which service providers that~~
4 ~~have entered into contracts or binding commitments with the authority have~~
5 ~~materially defaulted, been unable to fulfill their commitments, or have~~
6 ~~requested or been granted relief from contractual or binding commitments.~~

7 (10) ~~A current business plan for the authority, including an explanation~~
8 ~~of significant changes subsequent to the most recent previous report.~~

9 (11) ~~A list and description of all actions taken by the authority to~~
10 ~~transfer control of state-owned telecommunications facilities to the authority.~~

11 (12) ~~A description of the extent of the authority's assistance to and~~
12 ~~participation in proceedings before local zoning and development review~~
13 ~~boards, district environmental commissions, or project applicants seeking to~~
14 ~~construct or alter communications facilities located in the state.~~

15 (13) ~~Recommendations, if any, for further legislative action to promote~~
16 ~~the objectives of this chapter.~~

17 (b) ~~The authority shall deliver its annual report of January 1, 2011 by~~
18 ~~electronic mail to the home e-mail address of all members of the general~~
19 ~~assembly in office on that date and members-elect on that date with printed~~
20 ~~copies provided by regular mail to any member or member-elect lacking~~
21 ~~electronic mail services.~~

1 ~~Sec. 21. 30 V.S.A. § 8078 is amended to read:~~

2 ~~§ 8078. SELECTION OF PROPOSALS TO PROVIDE COMPETITIVE~~
3 ~~PROCESS~~

4 ~~(a) Broadband service; competitive process.~~

5 ~~(1) For the purposes of this chapter, a premise is "served" with~~
6 ~~broadband service if it has access to mass-market broadband services meeting~~
7 ~~the minimum technical characteristics identified pursuant to section 8077 of~~
8 ~~this title. For the purposes of this chapter, with respect to broadband service,~~
9 ~~"unserved area" shall mean a contiguous geographic area of the state, without~~
10 ~~regard to municipal boundaries or size of geographic area, which contains~~
11 ~~premises that can obtain basic telephone service but are not served.~~

12 ~~(2) By not later than December 1, 2007, the authority shall identify all~~
13 ~~served and unserved areas within the state. The authority may rely on readily~~
14 ~~and publicly available information to estimate the extent of these areas.~~

15 ~~(3) The authority shall seek to enable the development of networks and~~
16 ~~telecommunications infrastructure necessary to support provision of mass-~~
17 ~~market broadband services, in all unserved areas of the state, which meet or~~
18 ~~exceed the minimum technical characteristics identified pursuant to section~~
19 ~~8077 of this title.~~

20 ~~(4) The authority shall establish and utilize an open and competitive~~
21 ~~process to solicit proposals to eliminate unserved areas by the end of the year~~

1 ~~2010 through the development of telecommunications facilities or through~~
2 ~~binding commitments from service providers to offer broadband service to all~~
3 ~~unserved areas in a given region. For the purposes of this process, the~~
4 ~~authority may divide the state into one or more regions. The authority shall~~
5 ~~undertake substantial efforts to complete the process of competitively soliciting~~
6 ~~proposals by January 31, 2008. The authority shall solicit and accept~~
7 ~~broadband service expansion commitments in a manner that allows small~~
8 ~~locally based broadband providers a reasonable opportunity to contribute~~
9 ~~toward realization of the policy objectives of this chapter. In evaluating~~
10 ~~proposals, the authority shall consider:~~

11 ~~(A) the proposed data transfer rates and other data transmission~~
12 ~~characteristics of services which would be available to consumers;~~

13 ~~(B) the price to consumers of services;~~

14 ~~(C) the proposed cost to consumers of any new construction,~~
15 ~~equipment installation service, or facility required to obtain service;~~

16 ~~(D) whether the proposal would utilize the best available technology~~
17 ~~which is economically feasible; and~~

18 ~~(E) the ability to achieve the authority's objectives in the most cost-~~
19 ~~effective manner.~~

1 ~~(5) The authority may support or undertake projects that enable~~
2 ~~provision of broadband service in geographic areas currently served; provided~~
3 ~~that:~~

4 ~~(A) such projects are the most cost-effective method for providing~~
5 ~~broadband services in nearby unserved areas; and~~

6 ~~(B) before undertaking such projects, the authority makes reasonable~~
7 ~~effort to distinguish served areas and populations from unserved areas and~~
8 ~~populations within the geographic area that the project would serve, including~~
9 ~~recognition and consideration of known or probable service extensions or~~
10 ~~upgrades.~~

11 ~~(b) Commercial mobile radio (cellular) service, competitive process.~~

12 ~~(1) The authority shall seek to eliminate areas without access to~~
13 ~~commercial mobile radio service licensed by the Federal Communications~~
14 ~~Commission by 2010 through the construction of facilities and binding~~
15 ~~commitments from commercial mobile radio service providers.~~

16 ~~(2) The authority shall seek to expand access to all services that utilize~~
17 ~~the technical standards which are commonly in use for providing voice and~~
18 ~~data services through commercial mobile radio service.~~

19 ~~(3) The authority shall establish and utilize an open and competitive~~
20 ~~process to solicit proposals to eliminate areas without coverage from a provider~~
21 ~~of commercial mobile radio services within the state of Vermont by 2010~~

1 ~~through the development of telecommunications facilities and through binding~~
2 ~~commitments from service providers to expand service, including all unserved~~
3 ~~areas in a given region. For the purposes of this process, the authority may~~
4 ~~divide the state into one or more regions. The authority shall undertake~~
5 ~~substantial efforts to complete the process of competitively soliciting proposals~~
6 ~~by January 31, 2008. In evaluating proposals, the authority shall consider the~~
7 ~~extent to which a proposal meets coverage objectives while limiting~~
8 ~~environmental impact and providing opportunities for future development of~~
9 ~~wireless communications services.~~

Sec. 21. 30 V.S.A. § 8078 is amended to read:

§ 8078. SELECTION OF PROPOSALS TO PROVIDE COMPETITIVE PROCESS

(a) Broadband service; competitive process.

(1) For the purposes of this chapter, a premise is "served" with broadband service if it has access to mass-market broadband services meeting the minimum technical characteristics identified pursuant to section 8077 of this title. For the purposes of this chapter, with respect to broadband service, "unserved area" shall mean a contiguous geographic area of the state, without regard to municipal boundaries or size of geographic area, which contains premises that can obtain basic telephone service but are not served.

(2) ~~By not later than December 1, 2007, the authority shall identify all served and unserved areas within the state. The authority may rely on readily and publicly available information to estimate the extent of these areas.~~

(3) The authority shall seek to enable the development of networks and telecommunications infrastructure necessary to support provision of mass-market broadband services, in all unserved areas of the state, which meet or exceed the minimum technical characteristics identified pursuant to section 8077 of this title.

(4)(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate unserved areas by the end of the year ~~2010~~ 2013 through the development of telecommunications facilities or

through binding commitments from service providers to offer broadband service to all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. The authority shall solicit and accept broadband service expansion commitments in a manner that allows small locally based broadband providers a reasonable opportunity to contribute toward realization of the policy objectives of this chapter. In evaluating proposals, the authority shall consider:

(A) the proposed data transfer rates and other data transmission characteristics of services which would be available to consumers;

(B) the price to consumers of services;

(C) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(D) whether the proposal would utilize the best available technology which is economically feasible; ~~and~~

(E) the ability to achieve the authority's objectives in the most cost-effective manner; and

(F) the availability of service of comparable quality and speed.

~~(5)~~(4) The authority may support or undertake projects that enable provision of broadband service in geographic areas currently served; provided that:

(A) such projects are the most cost-effective method for providing broadband services in nearby unserved areas; and

(B) before undertaking such projects, the authority makes reasonable effort to distinguish served areas and populations from unserved areas and populations within the geographic area that the project would serve, including recognition and consideration of known or probable service extensions or upgrades.

(b) Commercial mobile radio (cellular) service, competitive process.

(1) The authority shall seek to eliminate areas without access to commercial mobile radio service licensed by the Federal Communications Commission by ~~2010~~ the end of the year 2013 through the construction of facilities and binding commitments from commercial mobile radio service providers.

(2) The authority shall seek to expand access to all services that utilize the technical standards which are commonly in use for providing voice and data services through commercial mobile radio service.

(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate areas without coverage from a provider of commercial mobile radio services within the state of Vermont by ~~2010~~ the end of the year 2013 through the development of telecommunications facilities and through binding commitments from service providers to expand service, including all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. In evaluating proposals, the authority shall consider the extent to which a proposal meets coverage objectives while limiting environmental impact and providing opportunities for future development of wireless communications services.

1 Sec. 22. 30 V.S.A. § 8079 is amended to read:

2 ~~§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT~~

3 ~~(a) To achieve the goals established in subsection 8060(b) of this title, the~~
4 ~~authority is authorized to invest in broadband infrastructure or contract with~~
5 ~~retail providers for the purpose of making services available to at least 10,000~~
6 ~~households or businesses in target communities where such services are~~
7 ~~currently unavailable or to upgrade services in underserved business districts,~~
8 ~~as determined by the authority. For the purposes of this section, target~~
9 ~~communities shall not be considered unserved if a broadband provider has a~~
10 ~~legally binding commitment to provide service to those locations or a provider~~
11 ~~has received a broadband stimulus grant to provide service to those locations.~~

12 ~~(b) To accomplish the purpose of this section, the authority shall publish a~~
13 ~~request for proposals for all of the following options for the purpose of~~

1 ~~providing broadband coverage to 100 percent of Vermont households and~~
2 ~~businesses within target communities: (1) the construction of physical~~
3 ~~broadband infrastructure, to be owned by the authority; (2) initiatives by~~
4 ~~public-private partnerships or retail vendors; or (3) programs that provide~~
5 ~~financial incentives to consumers, in the form of rebates for up to 18 months;~~
6 ~~for example, to ensure that providers have a sufficient number of subscribers.~~
7 ~~The authority shall select proposals for target communities that best achieve~~
8 ~~the objective stated in subsection (a) of this section, consistent with the criteria~~
9 ~~listed in subsections (c) and (d) of this section.~~

10 (e) Criteria. Any request for proposals developed under this section shall
11 include the following requirements:

12 (1) ~~The technology and infrastructure used by a telecommunications~~
13 ~~provider participating in a project pursuant to this section shall support the~~
14 ~~delivery of services with an upload speed of at least one megabit per second,~~
15 ~~and combined download and upload speeds equal to or greater than five~~
16 ~~megabits per second. However, the Vermont telecommunications authority~~
17 ~~may waive the one megabit upload speed requirement if it determines this is in~~
18 ~~the best interest of the consumers.~~

19 (2) ~~Infrastructure owned and leased by the authority shall be available~~
20 ~~for use by as many telecommunication providers as the technology will permit~~

1 ~~to avoid the state from establishing a monopoly service territory for one~~
2 ~~provider.~~

3 ~~(d) The authority shall review proposals and award contracts based upon~~
4 ~~the price, quality of services offered, positive experience with infrastructure~~
5 ~~maintenance, retail service delivery, and other factors determined to be in the~~
6 ~~public interest by the authority. In selecting target communities, the authority~~
7 ~~shall consider to the extent possible:~~

8 ~~(1) the proportion of homes and businesses in those communities~~
9 ~~without access to broadband service and without access to broadband service~~
10 ~~meeting the minimum technical service characteristic objectives established~~
11 ~~under section 8077 of this title;~~

12 ~~(2) the level of adoption of broadband service by residential and~~
13 ~~business users within the community;~~

14 ~~(3) opportunities to leverage or support other sources of federal, state, or~~
15 ~~local funding for the expansion or adoption of broadband service;~~

16 ~~(4) the number of potential new subscribers in each community and the~~
17 ~~total level of funding available for the program;~~

18 ~~(5) the geographic location of selected communities and whether new~~
19 ~~target communities would further the goal of bringing broadband service to all~~
20 ~~regions of the state; and~~

~~(6) pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, which will be awarded no later than October 1, 2010.~~

~~(e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100 percent coverage pursuant to this chapter and, once that is achieved, to then deliver fiber quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.~~

~~(f) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.~~

Sec. 22. 30 V.S.A. § 8079 is amended to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

(a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with retail providers for the purpose of making services available to at least 10,000 households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the authority. For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations

secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3).

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; or (2) ~~initiatives by public-private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers~~ or providers. The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

(c) Criteria. Any request for proposals developed under this section shall include the following requirements:

(1) The technology and infrastructure used by a telecommunications provider participating in a project pursuant to this section shall support the delivery of services with an upload speed of at least one megabit per second, and combined download and upload speeds equal to or greater than five megabits per second. However, the Vermont telecommunications authority may waive the one megabit upload speed requirement if it determines this is in the best interest of the consumers.

(2) Infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.

(d) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:

(1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;

(2) the level of adoption of broadband service by residential and business users within the community;

(3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;

(4) the number of potential new subscribers in each community and the total level of funding available for the program;

(5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state; and

(6) pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, which will be awarded no later than October 1, 2010 or any other federally funded programs that may exist to support telecommunications; and

(7) the action plan prepared by the secretary of administration under 3 V.S.A. § 2222b(b)(3).

(e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100 percent coverage pursuant to this chapter and, once that is achieved, to then deliver fiber quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.

(f) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.

* * * Smart Grid Project Manager * * *

Sec. 23. SMART GRID PROJECT MANAGER

The commissioner of public service is authorized to accept federal grants to fund a smart grid project manager to oversee the deployment of smart grid in Vermont. Such funds shall not be supplemented by a rate-based charge to consumers. The smart grid project manager shall be a temporary, limited-service, exempt position, the term of which shall expire upon the expenditure of all grants received under this section.

* * * ARRA Satellite Grant Program; Public Outreach * * *

1 Sec. ~~24~~ 23. HUGHESNET RECOVERY ACT PROGRAM

2 (a) Pursuant to the broadband initiatives program of the American
3 Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, Hughes Network
4 Systems, LLC (Hughes) was selected by the Rural Utilities Service (RUS) of
5 the United States Department of Agriculture as a nationwide provider under
6 RUS's satellite grant program and was awarded a \$58,700,000.00 grant in
7 2010. The grant allows Hughes to provide high speed Internet service by
8 satellite to over 105,000 rural residences by eliminating the cost of hardware
9 and installation and by reducing the price of monthly service plans.

10 (b) The satellite Internet service provided by Hughes may be the best
11 opportunity to bring broadband service to areas that otherwise might not be
12 served.

 (c) Notwithstanding the minimum technical service requirements
established by the department of public service under 30 V.S.A. § 8077, the
commissioner of public service and the director of the ~~telecommunications~~
~~division~~ *Vermont telecommunications authority* shall make known the
availability of the HughesNet recovery act program and reference Hughes in
relevant publications listing broadband providers in Vermont.

13 * * * VTA; Moratorium on Expenditures * * *

14 Sec. 25. VTA MORATORIUM ON EXPENDITURES

15 (a) Notwithstanding any other provision of law to the contrary, upon the
16 effective date of this act, the VTA shall:

17 (1) Seek permission from the National Telecommunications and
18 Information Administration within the United States Department of Commerce

1 ~~to transfer any of its rights and responsibilities under the Vermont Fiber Link~~
2 ~~project to its partner, Sovernet Fiber Corporation; and, if such permission is~~
3 ~~granted, to immediately transfer such rights and responsibilities as permitted.~~

4 ~~(2) Cease to expend state funds or enter into contracts for the~~
5 ~~construction or installation of telecommunications facilities without prior~~
6 ~~approval of the joint fiscal committee after consultation with the chairs of the~~
7 ~~senate committee on economic development, housing and general affairs and~~
8 ~~the house committee on commerce and community development.~~

9 ~~(b) Subdivision (a)(2) of this section shall not interfere with any~~
10 ~~contractual rights or responsibilities entered into by the VTA on or before the~~
11 ~~effective date of this act.~~

Sec. 24a. 3 V.S.A. § 2222c is added to read:

BROADBAND AND WIRELESS DEPLOYMENT

(a) DEFINITIONS

In this chapter:

(1) "Broadband" means high speed Internet access and includes all facilities, equipment, and apparatus used by a person or entity to provide such access to an end user.

(2) "Mbps" means megabits per second.

(3) "Wireless communications service" means retail communications service that allows for two-way transmission of voice and data using a local, state, national, or international network and in which the end user connects to the network using a circuit-switched handheld device with a built-in antenna that transmits voice or data through radio waves to a receiver that is located at or on a telecommunications facility as defined in section 248a of this title.

(b) REPORT; BROADBAND AND WIRELESS DEPLOYMENT; UNDERSERVED AND UNSERVED AREAS

On or before January 30, 2012, the secretary of administration or designee shall report to the general assembly each of the following:

(1) As of January 1, 2014, based upon data submitted by the providers, the areas of the state that will not be served by broadband. The report shall reflect both areas currently served as of the date of the report, as well as areas proposed to be served on or before January 1, 2014, including broadband and wireless communications services funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. The report shall include a map and a narrative description of each of the following, as of January 1, 2014:

(A) The areas served and the areas not served by broadband that has a download speed of at least 0.768 mbps and an upload speed of at least 0.2 mbps.

(B) The areas served and the areas not served by broadband that has a combined download and upload speed of at least five mbps.

(C) The areas served and the areas not served by wireless communications service.

(2) Estimates as can reasonably be identified of the cost to:

(A) Provide broadband that has a download speed of at least 0.768 mbps and an upload speed of at least 0.2 mbps to areas not served by such broadband.

(B) Provide broadband that has a combined download and upload speed of at least five mbps to areas not served by such broadband.

(C) Provide wireless communications service to the areas identified under subdivision (1)(C) of this subsection as not receiving such service.

Sec. 24b. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the state's role in telecommunications planning.

(2) *Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.*

(3) *Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.*

(4) *Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.*

(5) *Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.*

(6) *Support competitive choice for consumers among telecommunications service providers and promote open access among competitive service providers on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered.*

(7) *Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.*

(8) *Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:*

(A) *Uses the best commercially available technology.*

(B) *Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.*

(9) *In the deployment of broadband infrastructure pursuant to the objectives set forth in S.78 of the Acts of 2011, encourage the use of existing facilities, such as existing utility poles and corridors and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures.*

Sec. 24c. REPORT ON VTA'S SUSTAINABILITY ONCE 100 PERCENT COVERAGE ACHIEVED

(a) The mission of the Vermont Telecommunications Authority (VTA), as described in 30 V.S.A. § 8060 (b)(1) and (2), is to ensure "that all residences and business in all regions of the state have access to affordable broadband services" and to ensure "the ubiquitous availability of mobile telecommunication services" by the end of 2010, now to be extended to 2013.

(b) It is not clear what role the VTA intends to play in Vermont's telecommunications landscape after December 31, 2013 when 100 percent

broadband and cell coverage have been achieved in Vermont. It is not clear what source of revenues, if any, will support the VTA's operations into the future. It is not clear that Vermont taxpayers can continue to sustain the VTA's operational budget, which is \$900,000 under Secs. B.101 and D.101 of H.441 of the 2011 legislative session, as passed the House.

(c) The executive director of the VTA shall report to the chairs of the Senate Finance and Senate Economic Development, Housing, and General Affairs Committees, and the House Commerce and Economic Development Committee, with a detailed plan by January 30, 2012 demonstrating the extent to which revenues from VTA-owned infrastructure and lease agreements will be sufficient to fund the VTA's operating expenses beginning January 1, 2014. The report shall also detail how the revenues from those sources will be sufficient, after subtracting out VTA operating costs, to "continuously upgrade" broadband and cellular infrastructure throughout Vermont equitably and in time with technological advances.

1 Sec. ~~26~~ 25. EFFECTIVE DATE

2 This act shall take effect on passage.