

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred House Bill No. 297 entitled
3 “An act relating to duties and functions of the Department of Public Service”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * USF; Connectivity Fund; Prepaid Wireless; Rate of Charge * * *

8 Sec. 1. 30 V.S.A. § 7516 is added to read:

9 § 7516. CONNECTIVITY FUND

10 (a) There is created a Connectivity Fund to be administered by the Vermont
11 Telecommunications Authority for the purpose of providing access to Internet
12 service that is capable of speeds of at least 4 Mbps download and 1 Mbps
13 upload to every E-911 business and residential location in Vermont, beginning
14 with locations not served as of December 31, 2013 according to the minimum
15 technical service characteristic objectives applicable at that time. Any new
16 services funded in whole or in part by monies in this Fund shall be capable of
17 being continuously upgraded to reflect the best available, most economically
18 feasible service capabilities.

19 (b) The fiscal agent shall make distributions to the State Treasurer, for
20 deposit into the Connectivity Fund, as annually directed by the General
21 Assembly. In fiscal year 2015, such distributions shall reflect the incremental

1 revenue raised by increasing the universal service charge to two percent and by
2 collecting the charge from assessable telecommunications services not
3 assessed as of April 1, 2014, including the federal subscriber line charge;
4 directory assistance; enhanced services unless they are billed as separate line
5 items; and toll-related services.

6 (c) The Fund shall be administered pursuant to 32 V.S.A. chapter 7,
7 subchapter 5 comprising sums deposited into this account and interest accruing
8 to the Fund. Any remaining balance at the end of the fiscal year shall be
9 carried forward in the Fund.

10 Sec. 2. 30 V.S.A. § 7521 is amended to read:

11 § 7521. CHARGE IMPOSED; WHOLESale EXEMPTION

12 (a) A universal service charge is imposed on all retail telecommunications
13 service provided to a Vermont address. Where the location of a service and the
14 location receiving the bill differ, the location of the service shall be used to
15 determine whether the charge applies. The charge is imposed on the person
16 purchasing the service, but shall be collected by the telecommunications
17 provider. Each telecommunications service provider shall include in its tariffs
18 filed at the ~~public service board~~ Public Service Board a description of its
19 billing procedures for the universal service fund charge.

20 (b) The universal service charge shall not apply to wholesale transactions
21 between telecommunications service providers where the service is a

1 component part of a service provided to an end user. This exemption includes,
2 ~~but is not limited to,~~ network access charges and interconnection charges paid
3 to a local exchange carrier.

4 (c) In the case of mobile telecommunications service, the universal service
5 charge is imposed when the customer's place of primary use is in Vermont.
6 The terms "customer," "place of primary use," and "mobile
7 telecommunications service" have the meanings given in 4 U.S.C. § 124. All
8 provisions of 32 V.S.A. § 9782 shall apply to the imposition of the universal
9 service charge under this section.

10 (d)(1) In the case of prepaid wireless telecommunications services, the
11 universal service charge shall be imposed on the provider based on its gross
12 operating revenue.

13 (2) For purposes of this subsection:

14 (A) "Gross operating revenue" means the gross operating revenue
15 received by the provider from the sale of prepaid wireless telecommunications
16 service in Vermont, as reported to the Department of Public Service under
17 section 22 of this title.

18 (B) "Prepaid wireless telecommunications service" means a
19 telecommunications service as defined in section 203(5) of this title that a
20 consumer pays for in advance and that is sold in predetermined units or dollars
21 that decline with use.

1 (3) Annually, the Commissioner of Taxes shall investigate the revenue
2 generated in other states that impose a universal service charge on retail sales
3 of prepaid wireless telecommunications services and, based on the findings of
4 that investigation, make a reasonable determination as to whether Vermont
5 providers under this subsection are contributing proportionate universal service
6 charges. If the Commissioner, in consultation with the Commissioner of
7 Public Service, determines the Vermont universal service charge is not
8 proportionate, the Commissioner of Taxes shall assess an additional charge on
9 applicable providers or apply a credit to their charges in the subsequent year, at
10 a time and in a manner he or she deems appropriate.

11 Sec. 3. 30 V.S.A. § 7523 is amended to read:

12 § 7523. RATE ADJUSTED ANNUALLY OF CHARGE

13 ~~(a) Annually, after considering the probable expenditures for programs~~
14 ~~funded pursuant to this chapter, the probable service revenues of the industry~~
15 ~~and seeking recommendations from the department, the public service board~~
16 ~~shall establish a rate of charge to apply during the 12 months beginning on the~~
17 ~~following September 1. However, the rate so established shall not at any time~~
18 ~~exceed two percent of retail telecommunications service. The board's decision~~
19 ~~shall be entered and announced each year before July 15. However, if the~~
20 ~~general assembly does not enact an authorization amount for E-911 before July~~
21 ~~15, the board may defer decision until 30 days after the E-911 authorization is~~

1 ~~established, and the existing charge rate shall remain in effect until the board~~
2 ~~establishes a new rate~~ Beginning September 1, 2014, the annual rate of charge
3 shall be two percent of retail telecommunications service.

4 (b) Universal service charges imposed and collected by the fiscal agent
5 under this subchapter shall not be transferred to any other fund or used to
6 support the cost of any activity other than in the manner authorized by section
7 7511 of this title.

8 * * * VTA; Division for Connectivity * * *

9 Sec. 4. 3 V.S.A. § 2225 is added to read:

10 § 2225. DIVISION FOR CONNECTIVITY

11 (a) Creation. The Division for Connectivity is created within the Agency
12 of Administration as the successor in interest to and the continuation of the
13 Vermont Telecommunications Authority. A Director for Connectivity shall be
14 appointed by the Secretary of Administration. The Division shall receive
15 administrative support from the Agency. *[Not sure if this is necessary to state*
16 *explicitly.]*

17 (b) Purposes. The purposes of the Division are to promote:

18 (1) access to affordable broadband service to all residences and
19 businesses in all regions of the State, to be achieved in a manner that, to the
20 extent practical and cost effective, does not negatively affect the future
21 installation of the best commercially available broadband technology or result

1 in widespread installation of technology that becomes outmoded within a short
2 period after installation;

3 (2) universal availability of mobile telecommunication services,
4 including voice and high-speed data along roadways, and near universal
5 availability statewide;

6 (3) investment in telecommunications infrastructure in the State that
7 creates or completes the network for service providers to create last-mile
8 connection to the home or business and supports the best available and
9 economically feasible service capabilities;

10 (4) the continuous upgrading of telecommunications and broadband
11 infrastructure in all areas of the State is to reflect the rapid evolution in the
12 capabilities of available mobile telecommunications and broadband
13 technologies, and in the capabilities of mobile telecommunications and
14 broadband services needed by persons, businesses, and institutions in the State;

15 (5) the most efficient use of both public and private resources through
16 State policies by encouraging the development of open access
17 telecommunications infrastructure that can be shared by multiple service
18 providers; and

19 (6) measures designed to ensure every E-911 business and residential
20 location in Vermont has Internet access at speeds of 100 Mbps by the end of
21 the year 2024.

1 (c) Duties. To achieve its purposes, the Division shall:

2 (1) provide resources to local, regional, public, and private entities in the
3 form of grants, technical assistance, coordination, and other incentives;

4 (2) prioritize the use of existing buildings and structures, historic or
5 otherwise, as sites for visually-neutral placement of mobile
6 telecommunications and wireless broadband antenna facilities; and

7 (3) inventory and assess the potential to use federal radio frequency
8 licenses held by instrumentalities of the State to enable broadband service in
9 unserved areas of the State; take steps to promote the use of those licensed
10 radio frequencies for that purpose; and recommend to the General Assembly
11 any further legislative measures with respect to ownership, management, and
12 use of these licenses as would promote the general good of the State.

13 (4) coordinate telecommunications initiatives among Executive Branch
14 agencies, departments, and offices.

15 (5) from information reasonably available after public notice to and
16 written requests made of mobile telecommunications and broadband service
17 providers, develop and maintain an inventory of locations at which mobile
18 telecommunications and broadband services are not available within the State,
19 develop and maintain an inventory of infrastructure that is available or
20 reasonably likely to be available to support the provision of services to

1 unserved areas, and develop and maintain an inventory of infrastructure
2 necessary for the provision of these services to the unserved areas;

3 (6) identify the types and locations of infrastructure and services needed
4 to carry out the purposes stated in subsection (b) of this section;

5 (7) formulate an action plan to carry out the purposes stated in
6 subsection (b) of this section;

7 (8) coordinate the agencies of the State to make public resources
8 available to support the extension of mobile telecommunications and
9 broadband infrastructure and services to all unserved areas;

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

13 (10) through the Department of Innovation and Information, aggregate
14 and broker access at reduced prices to services and facilities required to
15 provide wireless telecommunications and broadband services; and waive or
16 reduce State fees for access to State-owned rights-of-way in exchange for
17 comparable value to the State, unless payment for use is otherwise required by
18 federal law.

19 (11) receive all technical and administrative assistance as deemed
20 necessary by the Director for Connectivity.

1 (d)(1) Deployment. The Director may request voluntary disclosure of
2 information regarding deployment of broadband, telecommunications
3 facilities, or advanced metering infrastructure that is not publicly funded. Such
4 information may include data identifying projected coverage areas, projected
5 average speed of service, service type, and the anticipated date of completion
6 in addition to identifying the location and routes of proposed cables, wires, and
7 telecommunications facilities.

8 (2) The Director may enter into a nondisclosure agreement with respect
9 to any voluntary disclosures under this subsection and the information
10 disclosed pursuant thereto shall remain confidential. Alternatively, entities that
11 voluntarily provide information requested under this subsection may select a
12 third party to be the recipient of such information. The third party may
13 aggregate information provided by the entities, but shall not disclose the
14 information it has received to any person, including the Director. The third
15 party shall only disclose the aggregated information to the Director. The
16 Director may publicly disclose aggregated information based upon the
17 information provided under this subsection. The confidentiality requirements
18 of this subsection shall not affect whether information provided to any agency
19 of the State or a political subdivision of the State pursuant to other laws is or is
20 not subject to disclosure.

1 (e) Minimum technical service characteristics. The Division shall only
2 promote the expansion of broadband services that offer actual speeds of at least
3 4 Mbps downstream and 1 Mbps upstream, or the minimum broadband speeds
4 established by the Federal Communications Commission for support from the
5 Connect America Fund, whichever is higher.

6 (f) Annual Report. Notwithstanding 2 V.S.A. § 20(d), on or before
7 January 31 of each year, the Director shall submit a report of its activities for
8 the preceding fiscal year to the General Assembly. Each report shall include
9 an operating and financial statement covering the Division's operations during
10 the year, including a summary of all grant awards and contracts and
11 agreements entered into by the Division, as well as the action plan required
12 under subdivision (c)(7) of this section. In addition, the report shall include a
13 map and narrative description of each of the following:

14 (1) the areas served and the areas not served by wireless
15 communications service, and cost estimates for providing such service to
16 unserved areas;

17 (2) the areas served and the areas not served by broadband that has a
18 download speed of at least 0.768 Mbps and an upload speed of at least 0.2
19 Mbps, and cost estimates for providing such service to unserved areas; and

1 (3) the areas served and the areas not served by broadband that has a
2 combined download and upload speed of at least 5 Mbps, and the costs for
3 providing such service to unserved areas.

4 Sec. 5. REPEAL

5 3 V.S.A. § 2222b (Secretary of Administration responsible for coordination
6 and planning) and § 2222c (Secretary of Administration to prepare deployment
7 report) are repealed.

8 Sec. 6. CREATION OF POSITIONS; TRANSFER OF VACANT
9 POSITIONS; REEMPLOYMENT RIGHTS

10 (a) The following exempt positions are created within the Division for
11 Connectivity: one full-time Director; one full-time Senior Project Manager;
12 and three full-time Project Managers.

13 (b) The positions created under subsection (a) of this section shall only be
14 filled to the extent there are existing vacant positions in the Executive Branch
15 available to be transferred and converted to the new positions in the Division
16 for Connectivity, as determined by the Secretary of Administration and the
17 Commissioner of Human Resources, so that the total number of authorized
18 positions in the State shall not be increased by this act.

19 (c) All full-time personnel of the Vermont Telecommunications Authority
20 employed by the Authority on the day immediately preceding the effective date
21 of this act, who do not obtain a position in the Division for Connectivity

1 pursuant to subsection (a) of this section, shall be entitled to the same
2 reemployment or recall rights available to non-management State employees
3 under the existing collective bargaining agreement entered into between the
4 State and the Vermont State Employees' Association.

5 Sec. 7. TRANSITIONAL PROVISIONS

6 (a) Personnel. The Secretary of Administration shall determine where the
7 offices of the Division for Connectivity shall be housed.

8 (b) Assets and liabilities. The assets and liabilities of the Vermont
9 Telecommunications Authority (VTA) shall become the assets and liabilities of
10 the Agency of Administration.

11 (c) Legal and contractual obligations. The Executive Director of the VTA,
12 in consultation with the Secretary of Administration, shall identify all grants
13 and contracts of the VTA and create a plan to redesignate the Agency of
14 Administration as the responsible entity. The plan shall ensure that all existing
15 grantors, grantees, and contractors are notified of the redesignation.

16 Sec. 8. 30 V.S.A. § 202d(g) is added to read:

17 (g) The Department of Public Service shall, as part of the Plan required by
18 this section, identify minimum technical service characteristics which ought to
19 be available as part of broadband services commonly sold to residential and
20 small business users throughout the State. In this chapter, “broadband” means
21 high speed Internet access. The Department shall consider the performance

1 characteristics of broadband services needed to support current and emerging
2 applications of broadband services. The Department shall review and update
3 the minimum characteristics established under this section not less than every
4 three years beginning in 2014. In the event such review is conducted
5 separately from an update of the State Telecommunications Plan, the
6 Department shall issue revised minimum technical service characteristics as an
7 amendment to the Plan.

8 Sec. 9. NOTICE TO UNSERVED

9 On June 1, 2014 the Vermont Telecommunications Authority, in
10 conjunction with the Agency of Administration and the Department of Public
11 Service, shall send to each person a written notice communicating the status of
12 broadband deployment as it affects him or her. Such notice shall include an
13 explanation as to why the person is unserved and a date by which the person
14 may expect to be served. For purposes of this section, “person” means the
15 owner of an E-911 address who, as of December 31, 2013, did not have access
16 to mass-market broadband services having a download speed of at least 0.768
17 Mbps and an upload speed of at least 0.2 Mbps.

18 * * * Extension of 248a; Automatic Party Status * * *

19 Sec. 10. 30 V.S.A. § 248a is amended to read:

20 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

21 FACILITIES

1 (a) Certificate. Notwithstanding any other provision of law, if the applicant
2 seeks approval for the construction or installation of telecommunications
3 facilities that are to be interconnected with other telecommunications facilities
4 proposed or already in existence, the applicant may obtain a certificate of
5 public good issued by the Public Service Board under this section, which the
6 Board may grant if it finds that the facilities will promote the general good of
7 the State consistent with subsection 202c(b) of this title. A single application
8 may seek approval of one or more telecommunications facilities. An
9 application under this section shall include a copy of each other State and local
10 permit, certificate, or approval that has been issued for the facility under a
11 statute, ordinance, or bylaw pertaining to the environment or land use.

12 * * *

13 (i) Sunset of Board authority. Effective July 1, ~~2014~~ 2016, no new
14 applications for certificates of public good under this section may be
15 considered by the Board.

16 * * *

17 (m) Municipal bodies; participation. The legislative body and the planning
18 commission for the municipality in which a telecommunications facility is
19 located shall have the right to appear and participate on any application under
20 this section seeking a certificate of public good for the facility.

21 Sec. 9. 10 V.S.A. § 1264(j) is amended to read:

1 (j) Notwithstanding any other provision of law, if an application to
2 discharge stormwater runoff pertains to a telecommunications facility as
3 defined in 30 V.S.A. § 248a and is filed before July 1, ~~2014~~ 2016 and the
4 discharge will be to a water that is not principally impaired by stormwater
5 runoff:

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

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

12 Sec. 11. 10 V.S.A. § 8506 is amended to read:

13 § 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
14 FACILITY; APPEALS

15 (a) Within 30 days of the date of the act or decision, any person aggrieved
16 by an act or decision of the ~~secretary~~ Secretary, under the provisions of law
17 listed in section 8503 of this title, or any party by right may appeal to the
18 ~~public service board~~ Public Service Board if the act or decision concerns a
19 renewable energy plant for which a certificate of public good is required under
20 30 V.S.A. § 248 or a telecommunications facility for which the applicant has
21 applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for

1 approval under 30 V.S.A. § 248a. This section shall not apply to a facility that
2 is subject to section 1004 (dams before the Federal Energy Regulatory
3 Commission) or 1006 (certification of hydroelectric projects) or chapter 43
4 (dams) of this title. This section shall not apply to an appeal of an act or
5 decision of the ~~secretary~~ Secretary regarding a telecommunications facility
6 made on or after July 1, ~~2014~~2016.

7 * * *

8 Sec. 12. 2011 Acts and Resolves No. 53, Sec. 14d is amended to read:

9 Sec. 14d. PROSPECTIVE REPEALS; EXEMPTIONS FROM

10 MUNICIPAL BYLAWS AND ORDINANCES

11 Effective July 1, ~~2014~~2016:

12 (1) 24 V.S.A. § 4413(h) (limitations on municipal bylaws) shall be
13 repealed; and

14 (2) 24 V.S.A. § 2291(19) (municipal ordinances; wireless
15 telecommunications facilities) is amended to read:

16 * * *

17 Sec. 13. 3 V.S.A. § 2809 is amended to read:

18 § 2809. REIMBURSEMENT OF AGENCY COSTS

19 (a)(1) The Secretary may require an applicant for a permit, license,
20 certification, or order issued under a program that the Secretary enforces under
21 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, programmatic,

1 or engineering expertise provided by the Agency of Natural Resources,
2 provided:

3 (A) ~~the~~ The Secretary does not have such expertise or services and
4 such expertise is required for the processing of the application for the permit,
5 license, certification, or order; ~~or~~.

6 (B) ~~the~~ The Secretary does have such expertise but has made a
7 determination that it is beyond the ~~agency's~~ Agency's internal capacity to
8 effectively utilize that expertise to process the application for the permit,
9 license, certification, or order. In addition, the Secretary shall determine that
10 such expertise is required for the processing of the application for the permit,
11 license, certification, or order.

12 (2) The Secretary may require an applicant under 10 V.S.A. chapter 151
13 to pay for the time of Agency of Natural Resources personnel providing
14 research, scientific, or engineering services or for the cost of expert witnesses
15 when ~~agency~~ Agency personnel or expert witnesses are required for the
16 processing of the permit application.

17 (3) In addition to the authority set forth under 10 V.S.A. chapters 59 and
18 159 and § section 1283, the Secretary may require a person who caused the
19 ~~agency~~ Agency to incur expenditures or a person in violation of a permit,
20 license, certification, or order issued by the Secretary to pay for the time of
21 ~~agency~~ Agency personnel or the cost of other research, scientific, or

1 engineering services incurred by the ~~agency~~ Agency in response to a threat to
2 public health or the environment presented by an emergency or exigent
3 circumstance.

4 * * *

5 (g) Concerning an application for a permit to discharge stormwater runoff
6 from a telecommunications facility as defined in 30 V.S.A. § 248a that is filed
7 before July 1, ~~2014~~ 2016:

8 (1) Under subdivision (a)(1) of this section, the ~~agency~~ Agency shall not
9 require an applicant to pay more than \$10,000.00 with respect to a facility.

10 (2) The provisions of subsection (c) (mandatory meeting) of this section
11 shall not apply.

12 * * * PSB Rules; Cable Line Extensions * * *

13 Sec. 14. PSB RULES ON CABLE LINE EXTENSIONS

14 The Public Service Board shall amend its line extension policy in Board
15 Rule 8.313 to lower density requirements, i.e., the requisite verified subscribers
16 per mile, for new cable-funded line extensions beginning September 1, 2014.
17 The maximum number of verified subscribers per mile above which new
18 subscribers shall not be required to contribute to aerial cable construction costs
19 shall not exceed 12, unless the Board, after a hearing, determines such
20 maximum would prevent a company from sufficiently recovering its costs,
21 taking into consideration costs and revenues from all services statewide. The

1 Board shall require a cable company to expand service to unserved areas
2 within its franchise area where the density of locations passed per mile, as
3 determined by the Board, is equal to or exceeds the maximum number of
4 verified subscribers per mile.

5 * * * Administration Report; E-911; Vermont Communications

6 Board * * *

7 Sec. 15. ADMINISTRATION REPORT; E-911; VCB; VCGI

8 (a) On January 1, 2015, the Secretary of Administration shall submit a
9 report to the General Assembly proposing a plan for transferring the
10 responsibilities and powers of the Enhanced 911 Board, including necessary
11 positions, to the Division for Connectivity, the Department of Public Service,
12 or the Department of Public Safety, as he or she deems appropriate. The plan
13 shall include budgetary recommendations and shall strive to achieve annual
14 operational savings of at least \$300,000.00, as well as enhanced coordination
15 and efficiency, and reductions in operational redundancies. The report shall
16 include draft legislation implementing the Secretary's plan.

17 (b) As part of the report required in subsection (a) of this section, the
18 Secretary shall also make findings and recommendations regarding the status
19 of the Vermont Communications Board, Department of Public Safety. If not
20 prohibited by federal law, the Secretary shall propose draft legislation creating
21 an advisory board within the Division for Connectivity or the Department of

1 Public Safety comprised of 15 members appointed by the Governor to assume
2 functions of the current Enhanced 911 Board and the Vermont
3 Communications Board, as the Secretary deems appropriate. Upon
4 establishment of the new advisory board and not later than July 1, 2015, the
5 E-911 Board and the Vermont Communications Board shall cease to exist.

6 *** * * DPS Deployment Report * * ***

7 Sec. 16. DEPARTMENT OF PUBLIC SERVICE; DEPLOYMENT REPORT

8 On July 15, 2015, the Commissioner of Public Service shall submit to the
9 General Assembly a report, including maps, indicating the service type and
10 average speed of service of mobile telecommunications and broadband
11 services available within the State by census block as of June 30, 2015
12 *[probably flesh this out a bit]*.

13 *** * * VTA; Dormant Status * * ***

14 Sec. 17. [PLACEHOLDER FOR PLACING VTA ON DORMANT STATUS
15 AS OF JULY 1, 2015 AND UNTIL ENACTMENT BY GENERAL
16 ASSEMBLY]

17 *** * * Construction Projects; Public Rights of Way * * ***

18 Sec. 18. [PLACEHOLDER FOR REQUIRING UNDERGROUND
19 CONDUIT INSTALLATION DURING CONSTRUCTION PROJECTS
20 ALONG PUBLIC RIGHTS OF WAYS]

21 *** * * CPG; Annual Renewals Until Telecom Plan * * ***

1 Sec. 19. [PLACEHOLDER FOR ALLOWING ONLY ONE-YEAR
2 RENEWALS OF TELECOM CPGS UNTIL NEW, NEW TELECOM PLAN
3 PUBLISHED BY THE DPS]

4 * * * **Statutory Revision Authority** * * *

5 Sec. 20. STATUTORY REVISION

6 The Office of the Legislative Council pursuant to its statutory revision
7 authority is directed to delete all references to “by the end of the year 2013” in
8 30 V.S.A. chapter 91.

9 * * * **Effective Dates** * * *

10 Sec. 21. EFFECTIVE DATES

11 This act shall take effect on passage, except that:

12 (1) Secs. XXXX (regarding the Division for Connectivity) shall take
13 effect on July 1, 2015; and

14 (2) Sec. 7 (universal service charge applied to prepaid wireless
15 telecommunications services) shall take effect on July 1, 2014.

16
17 and that after passage the title of the bill be amended to read: “An act relating
18 to Vermont telecommunications policy”