

1 H.870

2 Introduced by Committee on Commerce and Economic Development

3 Date:

4 Subject: Telecommunications; siting; Vermont Universal Service Fund;

5 Connectivity Initiative; telecommunications news service; public

6 school grants

7 Statement of purpose of bill as introduced: This bill proposes to make various  
8 amendments to Vermont law concerning telecommunications.

9 An act relating to telecommunications

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

11 \* \* \* PSB Telecommunications Siting; Municipal Role \* \* \*

12 Sec. 1. 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  
17 facilities that are to be interconnected with other telecommunications facilities  
18 proposed or already in existence, the applicant may obtain a certificate of  
19 public good issued by the Public Service Board under this section, which the  
20 Board may grant if it finds that the facilities will promote the general good of

1 the State consistent with subsection 202c(b) of this title. A single application  
2 may seek approval of one or more telecommunications facilities. An  
3 application under this section shall include a copy of each other State and local  
4 permit, certificate, or approval that has been issued for the facility under a  
5 statute, ordinance, or bylaw pertaining to the environment or land use.

6 (b) Definitions. As used in this section:

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

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

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

19 (B) the total amount of impervious surface, including access roads,  
20 surrounding the facility or support structure is not increased by more than  
21 300 square feet;

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

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

9           (3) “Good cause” means a showing of evidence that the substantial  
10 deference required under subdivision (c)(2) of this section would create a  
11 substantial shortcoming detrimental to the public good or State’s interests in  
12 section 202c of this title.

13           (4)(A) “Limited size and scope” means:

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

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

1           (B) For construction described in subdivision (3)(A) of this  
2 subsection to be of limited size and scope, it shall not disturb more than  
3 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision,  
4 “disturbed earth” means the exposure of soil to the erosive effects of wind,  
5 rain, or runoff.

6           (5) “Substantial deference” means that the plans and recommendations  
7 referenced under subdivision (c)(2) of this section are presumed correct, valid,  
8 and reasonable.

9           ~~(4)~~(6) “Telecommunications facility” means a communications facility  
10 that 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  
13 associated support structure that is proposed for construction or installation  
14 which is primarily for communications purposes, and any ancillary  
15 improvements that are proposed for construction or installation and are  
16 primarily intended to serve the communications facilities or support structure.  
17 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)~~(7) “Wireless service” means any commercial mobile radio service,  
21 wireless service, common carrier wireless exchange service, cellular service,

1 personal communications service (PCS), specialized mobile radio service,  
2 paging service, wireless data service, or public or private radio dispatch  
3 service.

4 (c) Findings. Before the Public Service Board issues a certificate of public  
5 good under this section, it shall find that:

6 (1) The proposed facility will not have an undue adverse effect on  
7 aesthetics, historic sites, air and water purity, the natural environment, and the  
8 public health and safety, and the public's use and enjoyment of the I-89 and  
9 I-91 scenic corridors or of any highway that has been designated as a scenic  
10 road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C.  
11 § 162, with due consideration having been given to the relevant criteria  
12 specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).  
13 However, with respect to telecommunications facilities of limited size and  
14 scope, the Board shall waive all criteria of this subdivision other than  
15 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty,  
16 historic sites, rare and irreplaceable natural areas; endangered species;  
17 necessary wildlife habitat). Such waiver shall be on condition that:

18 (A) the Board may determine, pursuant to the procedures described  
19 in subdivision (j)(2)(A) of this section, that a petition raises a significant issue  
20 with respect to any criterion of this subdivision; and

1           (B) a telecommunications facility of limited size and scope shall  
2           comply, at a minimum, with the requirements of the Low Risk Site Handbook  
3           for Erosion Prevention and Sediment Control issued by the Department of  
4           Environmental Conservation, regardless of any provisions in that handbook  
5           that limit its applicability.

6           (2) Unless there is good cause to find otherwise, substantial deference  
7           has been given to ~~the land conservation measures in~~ the plans of the affected  
8           municipalities ~~and;~~ to the recommendations of the municipal legislative bodies  
9           and the municipal ~~and regional~~ planning commissions regarding the municipal  
10          ~~and regional plans, respectively;~~ and to the recommendations of the regional  
11          planning commission concerning the regional plan. Nothing in this section or  
12          other provision of law shall prevent a municipal body from basing its  
13          recommendations to which substantial deference is required under this  
14          subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw  
15          adopted under 24 V.S.A. chapter 117 by the municipality in which the facility  
16          is located. A rebuttable presumption respecting compliance with the  
17          applicable plan shall be created by a letter from an affected municipal  
18          legislative body or municipal planning commission concerning compliance  
19          with the municipal plan and by a letter from a regional planning commission  
20          concerning compliance with the regional plan.

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

5                   (A) If a proposed new support structure for a new  
6           telecommunications facility that provides wireless service will exceed 50 feet  
7           in height in a cleared area or will exceed 20 feet in height above the average  
8           treeline measured within a 100-foot radius from the structure in a wooded area,  
9           the application shall identify all existing telecommunications facilities within a  
10          three-mile radius of the site of the proposed structure and, for each such  
11          existing facility, shall include a projection of the coverage and an estimate of  
12          additional capacity that would be provided if the applicant's proposed  
13          telecommunications equipment were located on or at the existing facility. The  
14          applicant also shall compare each such projection and estimate to the coverage  
15          and capacity that would be provided at the site of the proposed structure.

16                   (B) To obtain a finding that a proposed facility cannot reasonably be  
17          collocated on or at an existing telecommunications facility, the applicant must  
18          demonstrate that:

19                           (i) collocating on or at an existing facility will result in a  
20          significant reduction of the area to be served or the capacity to be provided by  
21          the proposed facility or substantially impede coverage or capacity objectives

1 for the proposed facility that promote the general good of the State under  
2 subsection 202c(b) of this title;

3 (ii) the proposed antennas and equipment will exceed the  
4 structural or spatial capacity of the existing or approved tower or facility, and  
5 the existing or approved tower or facility cannot be reinforced, modified, or  
6 replaced to accommodate planned or equivalent equipment, at a reasonable  
7 cost, to provide coverage and capacity comparable to that of the proposed  
8 facility;

9 (iii) the owner of the existing facility will not provide space for  
10 the applicant's proposed telecommunications equipment on or at that facility  
11 on commercially reasonable terms; or

12 (iv) the proposed antennas and equipment will cause radio  
13 frequency interference that will materially impact the usefulness of other  
14 existing or permitted equipment at the existing or approved tower or facility  
15 and such interference cannot be mitigated at a reasonable cost.

16 \* \* \*

17 (h) Exemptions from other law.

18 (1) An applicant using the procedures provided in this section shall not  
19 be required to obtain a permit or permit amendment or other approval under  
20 the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the  
21 facilities subject to the application or to a certificate of public good issued

1 pursuant to this section. This exemption from obtaining a permit or permit  
2 amendment under 24 V.S.A. chapter 117 shall not affect the substantial  
3 deference to be given to a plan or recommendation based on a local land use  
4 bylaw under subdivision (c)(2) of this section.

5 (2) ~~Ordinances~~ An applicant using the procedures provided in this  
6 section shall not be required to obtain an approval from the municipality under  
7 an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter  
8 that would otherwise apply to the construction or installation of facilities  
9 subject to this section ~~are preempted~~. This exemption from obtaining an  
10 approval under such an ordinance shall not affect the substantial deference to  
11 be given to a plan or recommendation based on such an ordinance under  
12 subdivision (c)(2) of this section.

13 (3) Disputes over jurisdiction under this section shall be resolved by the  
14 Public Service Board, subject to appeal as provided by section 12 of this title.  
15 An applicant that has obtained or been denied a permit or permit amendment  
16 under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction  
17 of a telecommunications facility may not apply for approval from the Board  
18 for the same or substantially the same facility, except that an applicant may  
19 seek approval for a modification to such a facility.

20 \* \* \*

1 Sec. 2. 24 V.S.A. § 4412(8)(C) is amended to read:

2 (C) The regulation of a telecommunications facility, as defined in  
3 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter  
4 when and to the extent jurisdiction is assumed by the Public Service Board  
5 according to the provisions of that section. This exemption from obtaining  
6 approval under this chapter shall not affect the substantial deference to be  
7 given to a plan or recommendation based on a local land use bylaw under  
8 30 V.S.A. § 248a(c)(2).

9 \* \* \* Connectivity Initiative; Public Schools; Cellular Service \* \* \*

10 Sec. 3. 30 V.S.A. § 7515b is amended to read:

11 § 7515b. CONNECTIVITY INITIATIVE

12 (a) The ~~purpose~~ goals of the Connectivity Initiative ~~is~~ are to:

13 (1) ~~provide~~ Provide each service location in Vermont access to Internet  
14 service that is capable of speeds of at least 10 Mbps download and 1 Mbps  
15 upload, or the FCC speed requirements established under Connect America  
16 Fund Phase II, whichever is higher, beginning with locations not served as of  
17 December 31, 2013 according to the minimum technical service characteristic  
18 objectives applicable at that time. Within this category of service locations,  
19 priority shall be given first to unserved and then to underserved locations. As  
20 used in this section, “unserved” means a location having access to only satellite  
21 or dial-up Internet service and “underserved” means a location having access

1 to Internet service with speeds that exceed satellite and dial-up speeds but are  
2 less than 4 Mbps download and 1 Mbps upload.

3 (2) Provide universal availability of mobile telecommunications service  
4 throughout the State.

5 (b) Any new services funded in whole or in part by monies from this  
6 Initiative shall be capable of being continuously upgraded to reflect the best  
7 available, most economically feasible service capabilities.

8 ~~(b)~~(c) The Department of Public Service shall publish annually a list of  
9 census blocks eligible for funding based on the Department's most recent  
10 broadband mapping data. The Department annually shall solicit proposals  
11 from telecommunications service providers, alone or in partnership with one or  
12 more municipalities, to deploy broadband to eligible census blocks.

13 (d) The Department shall give priority to proposals that reflect the lowest  
14 cost of providing services to unserved and underserved locations; ~~however or~~  
15 that include upgrading Internet service at one or more public schools that do  
16 not have access to Internet service capable of the minimum speeds required  
17 under subdivision (a)(1) of this section. In addition, the Department shall give  
18 priority to proposals that include matching public or private funds and establish  
19 an alignment between the proposed broadband or cellular project and  
20 community goals.

1       (e) In addition to the priorities established in subsection (d) of this section,

2       the Department also shall consider:

3           (1) the proposed data transfer rates and other data transmission  
4       characteristics of services that would be available to consumers;

5           (2) the price to consumers of services;

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

8           (4) whether the proposal would use the best available technology that is  
9       economically feasible;

10          (5) the availability of service of comparable quality and speed; ~~and~~

11          (6) the objectives of the State's Telecommunications Plan;

12          (7) whether a public school has a percentage of students receiving free  
13       or reduced lunches that is above the State average;

14          (8) whether the community in which a public school is situated does not  
15       have high speed Internet connectivity; and

16          (9) whether the community in which a public school is situated is rural  
17       and has a percentage of households categorized as low-income that is higher  
18       than the State average.

1       Sec. 4. FY 2017 CAPITAL APPROPRIATION; CONNECTIVITY

2                   INITIATIVE

3               The sum of \$1,000,000.00 is appropriated to the Connectivity Initiative,  
4               established in 30 V.S.A. § 7515b, from the bond premium in the FY17 Capital  
5               Budget Adjustment Act.

6       Sec. 5. 30 V.S.A. § 7523 is amended to read:

7       § 7523. RATE OF CHARGE

8           (a) Beginning on July 1, 2014, the rate of charge shall be two percent of  
9       retail telecommunications service.

10          (b) Beginning on July 1, 2016 and ending on June 30, 2020, the rate of  
11       charge established under subsection (a) of this section shall be increased by  
12       one-half of one percent of retail telecommunications service, and the monies  
13       collected from this increase shall be transferred to the Connectivity Fund  
14       established under section 7516 of this title to provide specifically additional  
15       support for the Connectivity Initiative established under section 7515b of this  
16       title.

17          (c) Universal Service Charges imposed and collected by the fiscal agent  
18       under this subchapter shall not be transferred to any other fund or used to  
19       support the cost of any activity other than in the manner authorized by this  
20       section and section 7511 of this title.

1       Sec. 6. 30 V.S.A. § 7516 is amended to read:

2       § 7516. CONNECTIVITY FUND

3           (a) There is created a Connectivity Fund for the purpose of providing  
4       support to the High-Cost Program established under section 7515 of this  
5       chapter and the Connectivity Initiative established under section 7515b of this  
6       chapter. The fiscal agent shall determine annually, on or before September 1,  
7       the amount of monies available to the Connectivity Fund. Such funds shall be  
8       apportioned as follows: 45 percent to the High-Cost Program and 55 percent  
9       to the Connectivity Initiative.

10          (b) In addition to the monies transferred to the Fund pursuant to subsection  
11       (a) of this section, monies collected from one-half of one percent of the  
12       Universal Service Charge shall be allocated to the Fund specifically to provide  
13       additional support to the Connectivity Initiative, as prescribed in subsection  
14       7523(b) of this title.

15                   \* \* \* VUSF; News Service; Blind and Visually Impaired \* \* \*

16       Sec. 7. 30 V.S.A. § 7511 is amended to read:

17       § 7511. DISTRIBUTION GENERALLY

18           (a)(1) As directed by the Commissioner of Public Service, funds collected  
19       by the fiscal agent, and interest accruing thereon, shall be distributed as  
20       follows:

1           (A) to pay costs payable to the fiscal agent under its contract with the  
2 Commissioner;

3           (B) to support the Vermont telecommunications relay service in the  
4 manner provided by section 7512 of this title;

5           (C) to support the Vermont Lifeline program in the manner provided  
6 by section 7513 of this title;

7           (D) to support Enhanced-911 services in the manner provided by  
8 section 7514 of this title; ~~and~~

9           (E) to support a telecommunications information and news service in  
10 the manner provided by section 7512a of this title; and

11           (F) to support the Connectivity Fund established in section 7516 of  
12 this title; and

13           (2) for fiscal year 2016 only, any personnel or administrative costs  
14 associated with the Connectivity Initiative shall come from the Connectivity  
15 Fund, as determined by the Commissioner in consultation with the  
16 Connectivity Board.

17           (b) If insufficient funds exist to support all of the purposes contained in  
18 subsection (a) of this section, the Commissioner shall allocate the available  
19 funds, giving priority in the order listed in subsection (a).

1 Sec. 8. 30 V.S.A. § 7512a is added to read:

2 § 7512a. TELECOMMUNICATIONS NEWS SERVICE

3 The fiscal agent shall make distributions to the State Treasurer for a  
4 telecommunications information and news service that provides access to  
5 existing newspapers and other printed materials for individuals who are blind,  
6 visually impaired, or otherwise unable to read such printed materials. The  
7 amount of the transfer shall be determined by the Commissioner of Public  
8 Service as the amount reasonably necessary to pay the costs of a contract  
9 administered by the Department of Public Service.

10 \* \* \* High-Cost Program; Eligibility; Deployment Information \* \* \*

11 Sec. 9. 30 V.S.A. § 7515 is amended to read:

12 § 7515. HIGH-COST PROGRAM

13 (a) The Universal Service Charge shall be used as a means of keeping basic  
14 telecommunications service affordable in all parts of this State, thereby  
15 maintaining universal service, and as a means of supporting access to  
16 broadband service in all parts of the State.

17 \* \* \*

18 (i) The amount of the monthly support under this section shall be the pro  
19 rata share of available funds based on the total number of incumbent local  
20 exchange carriers in the State and reflecting each carrier's lines in service or  
21 service locations in its high-cost area or areas, as determined under subsection

1 (e) of this section. If an incumbent local exchange carrier does not petition the  
2 Board for VETC designation, or is found ineligible by the Board or by the  
3 Commissioner of Public Service pursuant to his or her authority under  
4 subsection (k) of this section, the share of funds it otherwise would have  
5 received under this section shall be used to support the Connectivity Initiative  
6 established in section 7515b of this chapter.

7 \* \* \*

8 (l) Based on the recommendation of the Commissioner of Public Service,  
9 the Board may deem a company ineligible to receive monthly support under  
10 this section or revoke a company's VETC designation if he or she finds that  
11 the company or one of its affiliates has not provided adequate deployment  
12 information requested by the Director for Telecommunications and  
13 Connectivity under subsection 202e(c) of this title.

14 \* \* \* Proposal; School Connectivity Grant Program \* \* \*

15 Sec. 10. PROPOSAL; SCHOOL CONNECTIVITY GRANT PROGRAM

16 On or before December 1, 2016, the Secretary of Education and the Director  
17 of Telecommunications and Connectivity shall propose to the General  
18 Assembly in the form of a draft bill a school connectivity grant program  
19 designed to provide competitive grants to public schools for capital costs  
20 associated with the purchase of state-of-the-art educational applications and  
21 equipment. The goal of the program is to ensure that the maximum Internet

1 service available to the school is accessible by all personnel and students on  
2 school grounds, consistent with and supportive of educational policies and  
3 objectives. Proposed criteria shall prioritize rural communities having a  
4 percentage of households categorized as low-income that is higher than the  
5 State average.

6 \* \* \* Effective Date \* \* \*

7 Sec. 11. EFFECTIVE DATE

8 This act shall take effect on passage.