

Comcast Comment 2/9/2015

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Introduced by Representatives Young of Glover, Carr of Brandon, Botzow of Pownal, Higley of Lowell, Jewett of Ripton, Marcotte of Coventry, Parent of St. Albans City, and Patt of Worcester.

Referred to Committee on

Date:

Subject: Telecommunications; Department of Public Service; Division for Telecommunications and Connectivity; Advisory Board; Vermont Universal Service Fund; fiscal agent; Connectivity Fund; High-Cost Program; Connectivity Initiative

Statement of purpose of bill as introduced: This bill proposes to establish a Division for Telecommunications and Connectivity within the Department of Public Service, create a Telecommunications and Connectivity Advisory Board, and make various other amendments and clarifications regarding the Vermont Universal Service Fund fiscal agent, the Connectivity Fund, the High-Cost Program, and the Connectivity Initiative.

An act relating to creating a Division for Telecommunications and Connectivity within the Department of Public Service

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

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Sec. 1. REPEAL 1

3 V.S.A. § 2225 (creating the Division for Connectivity within the Agency of Administration) and 2014 Acts and Resolves No. 190, Secs. 12 (Division for Connectivity), (creation of positions; transfer; reemployment rights), and 30(a)(2) and (b) (statutory revision authority regarding the Division for Connectivity) are repealed.

Sec. 2. 30 V.S.A. § 1 is amended to read:

§ 1. COMPOSITION OF DEPARTMENT

(a) The Department of Public Service shall consist of the Commissioner of Public Service, a Director for Regulated Utility Planning, a Director for Public Advocacy, a Director for Energy Efficiency, a Director for Telecommunications and Connectivity, and such other persons as the Commissioner considers necessary to conduct the business of the Department.

(b) The Commissioner shall be appointed by the Governor with the advice and consent of the Senate. The Commissioner shall serve for a term of two years beginning on February 1 of the year in which the appointment is made. The Commissioner shall serve at the pleasure of the

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Governor. Directors for Regulated Utility Planning, for Public Advocacy, and for Energy Efficiency shall be appointed by the Commissioner. The Director for Telecommunications and Connectivity shall be appointed by the Commissioner in consultation with the Secretary of Administration.

(c) The Directors for Public Advocacy and for Telecommunications and Connectivity may employ, with the approval of the Commissioner, legal counsel and other experts, and clerical assistance, and the Directors for Regulated Utility Planning and for Energy Efficiency may employ, with the approval of the Commissioner, experts and clerical assistance.

Sec. 3. 30 V.S.A. § 202d is amended to read:

§ 202d. TELECOMMUNICATIONS PLAN

(a) The Department of Public Service shall constitute the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the State. The Department shall be responsible for the provision of plans for meeting

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emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The Department shall prepare a Telecommunications Plan for the State. The Department of Innovation and Information and the Agency of Commerce and Community Development shall assist the Department in preparing the Plan. The Plan shall be for a ten-year period and shall serve as a basis for State telecommunications policy. Prior to preparing the Plan, the Department shall prepare:

(1) an overview, looking ten years ahead, of future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the Department of Public Service, will significantly affect State telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the Agency of Commerce and Community Development to determine what telecommunications services are needed now and in the succeeding ten years;

(3) an assessment of the current state of telecommunications infrastructure;

(4) an assessment, conducted in cooperation with the Department of 20 Innovation and of the current

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State telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and prices for access to infrastructure, and comparisons of the state of technology deployment.

(c) In developing the Plan, the Department shall take into account the State telecommunications policies and goals of section 202c of this title.

(d) In establishing plans, public hearings shall be held and the Department shall consult with members of the public, representatives of telecommunications utilities, and providers of broadband and video services, and other interested State agencies, particularly the Agency of Commerce and Community Development, the Division for Connectivity, and the Department of Innovation and Information, whose views shall be considered in preparation of the Plan. To the extent necessary, the Department shall include in the Plan surveys to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the Department may require the submission of data by each company regarding services subject to supervision by the Public Service Board.

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(e) Before adopting a Plan, the Department shall conduct public hearings on a final draft and shall consider the testimony presented at such hearings in preparing the final Plan. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose. The Plan shall be adopted by September 1, 2014, and then reviewed and updated as provided in subsection (f) of this section.

(f) The Department, from time to time, but in no event less than every three years, institute proceedings to review the Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the Plan. For good cause or upon request by a Joint Resolution passed by the General Assembly, an interim review and revision of any section of the Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose.

(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan.

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Sec. 4. 30 V.S.A. § 202e is added to read:

§ 202e. TELECOMMUNICATIONS AND CONNECTIVITY

(a) Among other powers and duties specified in this title, the Department of Public Service, through the Division for Telecommunications and Connectivity, shall promote:

(1) access to affordable broadband service to all residences and businesses in all regions of the State, to be achieved in a manner that is consistent with the State Telecommunications Plan;

(2) universal availability of mobile telecommunication services, including voice and high-speed data along major roadways [term "roadways is too vague], and near universal availability statewide;

(3) investment in telecommunications infrastructure in the State 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;

(4) the periodic ~~continuous~~ upgrading of telecommunications and broadband infrastructure in all areas of the State to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the State; and

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

(b) To achieve the goals specified in subsection (a) of this section, the Division shall:

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

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

(3) 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 steps 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 use of these licenses as would promote the general good of the State;

(4) coordinate telecommunications initiatives among Executive Branch agencies, departments, and offices;

(5) identify the types and locations of infrastructure and services needed to carry out the goals stated in subsection (a) of this section;

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(6) formulate an action plan that conforms with the State Telecommunications Plan and carries out the goals stated in subsection (a) of this section;

(7) 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;

(8) support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and promote development of and access to infrastructure that enables and fosters the expansion of these services;

(9) through the Department of Innovation and Information, aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and 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; and

(10) receive all technical and administrative assistance as deemed necessary by the Director for Telecommunications and Connectivity.

(c)(1) The Director may request from telecommunications service providers voluntary disclosure of information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. Such information may include data identifying

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projected coverage areas, 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.

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

(d) The Division shall only promote the expansion of broadband services that offer actual speeds that meet or exceed the minimum technical service characteristic objectives contained in the State's Telecommunications Plan.

(e) Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Director shall submit a report of its activities for the preceding fiscal year

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to the General Assembly. Each report shall include an operating and financial statement covering the Division's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Division, as well as the action plan required under subdivision (b)(6) of this section. In addition, the report shall include an accurate map and narrative description of each of the following:

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

(2) 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, and cost estimates for providing such service to unserved areas;

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

(4) the areas served and the areas not served by broadband that has a download speed of at least 100 Mbps and is symmetrical, and the costs for providing such service to unserved areas.

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Sec. 5. 30 V.S.A. § 202f is added to read: 1

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY BOARD [Note: if the purpose is advice, Advisory Board should include industry representatives who are the people with in depth knowledge of state of telecommunications in Vermont].

(a) There is created a Telecommunications and Connectivity Advisory Board for the purpose of making recommendations to the Commissioner of Public Service regarding his or her

telecommunications responsibilities and duties under this title. The Advisory Board shall consist of 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 Secretary of Commerce and Community Development or his or her designee;
- (4) one member of the House of Representatives appointed by the Speaker of the House;
- (5) one member of the Senate appointed by the Committee on Committees of the Senate; and
- (6) four at-large members appointed by the Governor, who may not be employees or officers of the State at the time of appointment.

(b) A quorum of the Advisory Board shall consist of five members. No action of the Advisory Board shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only

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if at least four members vote in favor of the action. The Governor shall 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.

(c) 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 legislative and five four at-large members may not be persons with a financial interest in or owners or employees of an enterprise or an affiliated entity that provides telephone, broadband or cellular service or that is seeking in-kind or financial support from the Department of Public Service. 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 Commissioner 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 Commissioner to be unserved by mobile telecommunications at the time of his or her appointment or reappointment. The legislative and at-large members

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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 four 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 or up to three consecutive terms. Upon completion of a term of service for any reason, including the term's expiration or a member's resignation, and for one year from the date of such completion, a former Board member shall not advocate before the Authority on behalf of an enterprise that provides broadband or cellular service.

(d) Except for those members otherwise regularly employed by the State, the compensation of the Advisory Board's members is that provided by 32 V.S.A. § 1010(a). All members of the Advisory Board, 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.

(e) In performing its duties, the Advisory Board may use the legal and technical resources of the Department of Public Service. The Department of Public Service shall provide the Board with administrative services.

(f) At least annually, the Advisory Board and the Commissioner or designee shall jointly hold a public meeting to review and discuss the status of

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State telecommunications policy and planning, the Telecommunications Plan, the Connectivity Fund, the Connectivity Initiative, the High-Cost Program, and any other matters they deem necessary to fulfill their obligations under this section.

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

(a) Up to three additional exempt full-time positions are created within the Division for Telecommunications and Connectivity, as deemed necessary by the Secretary of Administration.

(b) The positions created under subsection (a) of this section shall only be filled to the extent there are existing vacant positions in the Executive Branch available to be transferred and

converted to the new positions in the Division for Connectivity, as determined by the Secretary of Administration and the Commissioner of Human Resources, so that the total number of authorized positions in the State shall not be increased by this act.

(c) All full-time personnel of the Vermont Telecommunications Authority employed by the Authority on the day immediately preceding the effective date of this act who do not obtain a position in the Division for Connectivity pursuant to subsection (a) of this section shall be entitled to the same reemployment or recall rights available to nonmanagement State employees

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under the existing collective bargaining agreement entered into between the State and the Vermont State Employees' Association.

Sec. 7. 30 V.S.A. § 7503 is amended to read:

§ 7503. FISCAL AGENT

- (a) A fiscal agent shall be selected to receive and distribute funds under this chapter.
- (b) The fiscal agent shall be selected by the Commissioner of Public Service after competitive bidding. No telecommunications service provider shall be eligible to be the fiscal agent. The duties of the fiscal agent shall be determined by a contract with a term not greater than three years.
- (c) In order to finance grants and other expenditures that have been approved by the Public Service Board and the Department of Public Service, the fiscal agent may borrow money from time to time in anticipation of receipts during the current fiscal year. No such note shall have a term of repayment in excess of one year, but the fiscal agent may pledge its receipts in the current and future years to secure repayment. Financial obligations of the fiscal agent are not guaranteed by the State of Vermont.
- (d) The fiscal agent shall be audited annually by a certified public accountant in a manner determined by and under the direction of the Public Service Board.

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(e) The financial accounts of the fiscal agent shall be available at reasonable times to any telecommunications service provider in this State. The Public Service Board may investigate the accounts and practices of the fiscal agent and may enter orders concerning the same.

(f) The fiscal agent acts as a fiduciary and holds funds in trust for the 5 ratepayers until the funds have been disbursed as provided pursuant to sections 6 7511 through 7514 of this chapter. [Note: Fiscal Agent still need to disburse 911 and Relay funds, so sections 7511, etc. need to be retained].

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

§ 7516. CONNECTIVITY FUND

There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned ~~equally~~ as follows: 50-30 percent to the High-Cost Program and 50-70 percent to the Connectivity Initiative referenced in this section.

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

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby

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maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

(b) The Public Service Board, after review of a petition of a company holding a certificate of public good to provide telecommunications service in Vermont, and upon finding that the company meets all requirements for designation as an “eligible telecommunications carrier” as defined by the FCC, may designate the company as a Vermont-eligible telecommunications carrier (VETC).

(c) The ~~supported~~ services a designated VETC must provide are voice services, ~~as defined by the FCC,~~ and broadband Internet access, directly or through an affiliate. A VETC receiving support under this section shall use that support for capital improvements in high cost areas, as defined in subsection (f) of this section, to build broadband capable networks.

(d) The Board may designate multiple VETCs for a single high cost area, but each designated VETC shall:

(1) offer supported services to customers at all locations throughout the high cost area or areas for which it has been designated; and

(2) for its voice telephone services, meet service quality standards set by the Board.

(e) A VETC shall receive support as defined in subsection (i) of this section from the fiscal agent of the Vermont Universal Service Fund for each

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telecommunications line in service or service location, whichever is greater in number, in each high cost area it services. Such support may be made in the form of a net payment against the carrier's liability to the Fund. If multiple ETCs are designated for a single area, then each VETC shall receive support for each line it has in service.

(f) As used in this section, a Vermont telephone exchange is a "high cost area" if the exchange is served by a rural telephone company, as defined by federal law, or if the exchange is designated as a rural exchange in the wholesale tariff of a regional bell operating company (RBOC), as defined by the FCC, or of a successor company to an RBOC. An exchange is not a high cost area if the Public Service Board finds that voice and broadband Internet services ~~the supported services~~ are available to all locations throughout the exchange from at least two service providers.

(g) Except as provided in subsection (h) of this section, a VETC shall provide broadband Internet access at speeds meeting 4 Mbps download and 1 Mbps upload in each high cost area it serves within five years of designation. A VETC need not provide broadband service to a location that has service available from another service provider, as determined by the Department of Public Service.

(h) The Public Service Board may modify the build out requirements of subsection (d) of this section as it relates to broadband Internet access to be the

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geographic area that could be reached using one-half of the funds to be received over five years. A VETC may seek such waiver of the build out requirements within one year of designation and shall demonstrate the cost of meeting broadband Internet access requirements on an exchange basis and propose an alternative build out plan.

(i) The amount of the monthly support under this section shall be the pro rata share of available funds based on the total number of incumbent local exchange carriers in the State and reflecting each carrier's lines in service or service locations in its high-cost area or areas, as determined under subsection (e) of this section. If an incumbent local exchange carrier does not petition the Board for VETC designation, or is found ineligible by the Board, the share of funds it otherwise would have received under this section shall be used to support the Connectivity Initiative established in section 7515b of this chapter.

(j) The Public Service Board shall adopt by rule standards and procedures for ensuring projects funded under this section are not competitive overbuilds of existing wired telecommunications services.

(k) Each VETC shall submit certification that it is meeting the requirements of this section and an accounting of how it expended the funds received under this section in the previous calendar year, with its annual report to the Department of Public Service. For good cause shown, the Public

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Service Board may investigate submissions required by this subsection and may revoke a company's designation if it finds that the company is not meeting the requirements of this subsection.

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

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service that is capable of speeds of at least 4 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only satellite or dial-up Internet service [Note: perhaps define unserved by speed instead of by reference to satellite and dial up] and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps

upload. Any services funded in whole or in part by monies in this Fund from this Initiative shall be capable of being periodically ~~continuously~~ upgraded to reflect the best available, most economically feasible service capabilities.

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(b) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers to deploy broadband to eligible census blocks. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) whether the proposal would use the best available technology that is economically feasible;
- (5) the availability of service of comparable quality and speed; and
- (6) the objectives of the State's Telecommunications Plan.

Sec. 11. EFFECTIVE DATE

This act shall take effect on July 1, 2015.