



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: Senator Randy Brock
From: Maria Royle, Legislative Counsel
Date: October 30, 2018
Subject: **The State Telecommunications Plan – Background**

The statutory requirement for a 10-year¹ Telecom Plan was established in 1987. See 30 V.S.A. § 202d. The Plan was, and still is, required to serve as a basis for State telecommunications policy. By statute, the first Plan was to be adopted by January 1, 1989. It was not adopted until 1992.

In December 1991, the Public Service Board issued an order approving the extension of a rate agreement between a telephone company and the Department of Public Service (DPS). The approval was based, in part, on the Board finding that the agreement met the statutory rate-making criteria applicable to contract-based rate regulation under 30 V.S.A. § 226a.

One criterion of that rate statute is that the contract “takes into consideration any State Telecommunications Plan or policy adopted pursuant to section 202d.” The Board found that no such Plan had been adopted and then decided not to address this statutory criterion at all. That decision was challenged in Court. On appeal, the Vermont Supreme Court held that, although § 202d makes adoption of the Plan mandatory (by January 1, 1989), § 226a(c) itself does not suspend the Board’s powers under § 226a in the absence of a Telecommunications Plan.²

Section 202d has been amended several times over the years. Essentially, however, the requirement of a three-year major review has remained the same. The language has consistently specified that, “in no event less than every three years, [the DPS] shall institute proceedings to review the Plan and make revisions, where necessary.”

In 2004, pursuant to Act No. 164, Sec. 16, the General Assembly mandated that the next Plan shall be adopted by September 1, 2004. In 2014, pursuant to Act No. 190, Sec. 9, the General Assembly mandated that the next Plan shall be adopted by September 1, 2014. The 2014 date has been left unchanged under existing law.

¹ In 2004, the statute was amended to require a seven-year, instead of a 10-year plan. In 2014, the statute was amended to again require a 10-year plan.

² Petition of New England Telephone and Telegraph Co., 159 Vt. 459, 464–465 (1993).

Telecom Plans have been adopted in the following years: 1992, 1996, 1999, 2004, 2011, and 2014.

The statute does not require that the three-year major review result in a new Plan every three years, only that proceedings shall be instituted at least every three years. Although not specified in statute, an argument can be made that the proceedings should result in a revised Plan within a reasonable period of time, but not necessarily within the same year they are instituted. The General Assembly could clarify its intentions if it determines greater specificity is necessary.