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To: House Committees on Energy and Technology, on Government Operations, on Ways and Means, and on Appropriations and the Senate Committees on Finance and on Appropriations

From: Kristin L. Clouser, Secretary of Administration

Date: January 15, 2022

Subject: Report Related to the Funding of Enhanced 911 Operations Pursuant to [H.439 Sec E.235](#)

Introduction

This report provides information related to Enhanced 911 (E911) funding due to the General Assembly on January 15, 2021, pursuant to Act 74 Sec E.235.¹ Act 74 directs the Agency of Administration (AoA) to recommend changes to existing funding streams to ensure the long-term sustainability of E911. To accomplish this, AoA formed a working group consisting of Clay Purvis from the Public Service Department, Rebecca Sameroff from the Department of Taxes, Timothy Metayer from the Department of Finance and Management, and Barbara Neal, Executive Director of the Enhanced 911 Board.

E911 is funded through the Vermont Universal Service Fund (“VUSF”). The fund’s current revenues are insufficient to sustain E911’s program costs. The VUSF raises just under \$6 million a year, and its revenues are declining. The VUSF supports four programs in the following order of priority: Lifeline, Telephone Relay Service (including equipment), Enhanced 911, and the Vermont Community Broadband Board. In the event of a revenue shortfall, the VUSF statute directs the Department of Public Service to pay the programs in the order of priority listed. The exception to this list is the VCBB, which is guaranteed to receive at a minimum 17% of the fund’s annual revenue. Due to this exception, E911 is functionally the last program to receive funding and the first to be cut in a shortfall situation.

The VUSF collects revenue by assessing a charge of 2.4% on all retail voice telecommunications services. This fee is set by statute and cannot be changed or amended without an act of the General Assembly.

Due to changes in the market, the assessable revenue base (i.e., voice services) has been declining for several years. Although consumers still spend the same or more for telecommunications and information services, these charges are increasingly attributed to non-assessable services like data. The reduction in

¹ <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT074/ACT074%20As%20Enacted.pdf>

assessable revenue has translated into reductions in revenues to the fund. At the same time, program expenses are increasing as would be expected.

To resolve this problem without increasing the surcharge every year, the Fund’s method of contribution would need to change. Several states have transitioned to a “connection charge.” In these states, the state directs carriers to assess a fixed fee per voice line in service. This method has the benefit of stabilizing revenues into the fund because declines in the revenue base would not impact the revenues to the fund. Generally, lines in service remains constant from year to year. The drawback of a fixed fee is that it is a more regressive form of taxation, as subscribers with smaller monthly charges pay a proportionately higher amount. The following section explains how a fixed per-line charge could work in Vermont.

Recommendation

Enhanced 911 services are among the most critical of functions performed by any government and, as such, should not be controlled by the market conditions of telecommunications activity. The Agency recommends that, beginning in Fiscal Year 2023, E911 activities be funded by the general fund to ensure the levels of service and protection Vermonters deserve. This will create capacity within the Universal Service Fund which the Agency recommends be utilized by the Public Service Department for cell phone connectivity initiatives, to create or improve service in areas of the State which do not currently enjoy adequate cell coverage. The alternative fee structure provided below is not a recommendation but is intended to provide the Legislature with information. Further study and discussion should take place prior to adjusting the structure of the VUSF.

Alternative Fee Structure

The Federal Communications Commission requires service providers to report the quantity of telephone lines in in service (subscriptions) on their annual Form 477 report. Resources on Form 477, including which providers must report and which services they must include are provided on the FCC website.² Individual Form 477 filings by the carriers are not publicly available. The FCC periodically issues reports including compilation and analysis of the data included on these forms, including a Voice Subscriptions by State. The most recent report by the FCC, published 5/7/21, includes data reported by carriers as of 6/30/19.³ The data from this report is summarized in the table 1 below:

Table 1: Voice Subscriptions (in Thousands) - Vermont

Category	Sub-Category	Subscriptions	Percent
Mobile Telephony			
	Directly billed	469	53%
	Non directly billed	123	14%
Wireline			

² <https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources>

³ <https://www.fcc.gov/voice-telephone-services-report>



	ILECs	142	16%
	Non-ILECs	14	2%
VoIP			
	Interconnected VoIP	116	13%
	Over-the-Top VoIP	23	3%
Total		887	100%

Table 2 below relates the funds that would be generated by monthly fees of different amounts if these were applied to each of these numbers.

Table 2: Funds generated by monthly fee

Monthly Charge	Annual Funds Generated
\$0.50	\$ 5,322,000.00
\$0.60	\$ 6,386,400.00
\$0.70	\$ 7,450,800.00
\$0.80	\$ 8,515,200.00
\$0.90	\$ 9,579,600.00
\$1.00	\$ 10,644,000.00

Existing Precedent

Unintended consequences are always a risk when adopting changes to fee structure such as the one contemplated above. It would be advisable for Vermont to implement a new method of contribution only after studying the transition carefully. At least three states have transitioned to a “per connection” surcharge for universal service funding. These states are Nebraska, Utah, and New Mexico. Other states are considering a similar change.

Nebraska

In October of 2017, the Nebraska Public Service Commission issued an Order in Docket NUSF-100, changing the contribution methodology of the fund from a percentage surcharge on retail services (then 6.75%) to a connection-based mechanism. The Nebraska PSC’s stated purpose of implementing this change was to stabilize the fund that was declining from a decline in assessable revenue. The initial charge pertained only to residential voice services. In 2021, the fund expanded the surcharge to business



lines, as well. The surcharge is presently \$1.75, per connection, and the fund is slated to collect an estimated \$54 million in calendar year 2022. Nebraska uses the FCC's Form 477 data to calculate the rate.⁴ The rate is set by the PSC through an administrative proceeding. Nebraska imposes a separate fee for 911 service, ranging from \$.50-\$1.00.⁵

Utah

Utah imposes a \$.60/per connection surcharge on all voice telecommunications lines in service to support its Universal Public Telecommunications Services Support Fund (USSF). The change was implemented in 2018 to move away from a 1.65% contribution rate on carriers' intrastate telecommunications services. The rate is set by the Utah Public Service Commission through an administrative proceeding. Utah imposes a separate fee of \$.80 per-connection for 911 service.

New Mexico

New Mexico's Public Regulation Commission rules give the Commission flexibility to impose a fee as a percentage of retail sales or as a per-connection fee. New Mexico instituted a connection fee of \$.88 on all wireline and wireless voice connections. Because New Mexico's fund largely supports telephone carriers' high-cost areas, the charge is calculated based on the rural cost of service. New Mexico levies a separate fee for 911 service, which currently stands at \$.51 per connection.

Other States

Kansas and California are undertaking proceedings to modernize the contribution method for their respective states. This will likely result in a change to a connection-based method. It should be noted that like the examples above, other states have instituted multiple fees, one for each supported program. New England states in particular impose a separate fee for E911 services. For instance, Maine has a 911 surcharge of \$.45 per line in addition to a 2.1% surcharge for its universal service fund. Likewise, Connecticut imposes a 911 surcharge of \$.66 per line, New Hampshire's fee is \$.75, and both Rhode Island and Massachusetts charge \$1.00 per line for 911. These fees support 911 service only and do not cover other programs that have traditionally made up a universal service fund.

Conclusion

This report provides a simplistic example of how the fee could be assessed. Before transitioning to a fixed per-line charge, the state should further study how other states have implemented this change. Questions may arise such as to whether to include business lines, and how the transition should address wireless pre-paid calling. Any framework for adjusting the method of contribution should also include an administrative process for annually adjusting the fee to meet the revenue requirement set by the budgets passed by the legislature in the prior session.

Response to PEG Study proposals

⁴ Nebraska PSC Order ____ NUSF-111, August 7, 2018, <https://www.nebraska.gov/psc/orders/telecom/NUSF-111.PI-211.4.pdf>

⁵ E911 Surcharge - User Fees by State 2021, NENA, <https://www.nena.org/page/911RateByState>



The Act directs the Agency to provide comment on the proposals contained in the “PEG Study”⁶ commissioned in 2020. The PEG Study offers five proposals that, if taken together, would provide additional funding to support Access Management Organizations’ (AMO). The study reviews the following proposals:

1. Increase capital payments from cable companies to AMOs.
2. Impose a new charge on streaming video, and possibly satellite services as well.
3. Increase the Vermont Universal Service Fund rate and broaden the scope of its supported programs to include PEG.
4. Impose a new charge on utility pole connections.
5. Adopt a four-element bundle that would make substantial adjustments to the relative burdens of taxes and charges among different kinds of telecommunications providers.

Not all of these are “related to the capacity of the Universal service Fund” and thus do not prompt response in this report. Proposal #1 concerns the relationship between cable television providers and the AMOs that these providers contract with to meet their PEG access responsibilities, which is not related to the capacity of the USF. Proposal #2 concerns a proposed new tax to be imposed on video streaming services, which is related to the USF only in that it would be a similar fee imposed on a different industry, and not at all related to the capacity of the of the current VUSF. Proposal #4 concerns a new tax to be imposed on attachments to utility poles which is in no way related to the USF. It is important to note that the Study highlights Proposal #5 – a combination of the other four – as its lead recommendation. However, this report only addresses proposals #3 and #5 as they relate to the changes to the VUSF. Proposal #3 is a recommendation to fund AMOs through the USF, and as such is directly related to the capacity of fund. Specifically, the report states (PEG Study page 51):

The VUSF currently raises \$2.3 million in revenue for every 1.0 percent in the charge rate. Thus, if the Legislature wished to raise an additional \$500,000 for PEG access, it would raise the VUSF rate from 2.40 percent to 2.62 percent.

This report does not consider the merits of funding PEG through the VUSF. Nevertheless, simply raising the VUSF rate of charge to cover the existing programs, including the E911 appropriation would provide short-term relief. This proposal, however, would not address the underlying causes of the revenue declines and would lead to the same result. For this reason, the Agency would not recommend increasing the rate the charge.

Proposal #5 would reorganize several telecommunications policies, taxes, and fee structures. The proposal includes several risks and would risk hindering other state policies and goals, such as the expansion of fiber-to-the-home broadband and mobile wireless services. The proposal also hinges on changes to the VUSF fee structure that are likely unlawful and unworkable. Proposal 5 includes the following four elements:

1. Create a new Vermont Telecommunications Public Benefits Fund (TPBF), funded by a new pole attachment charge. The primary purpose would be to finance PEG access above and beyond what the cable companies are required to pay as a franchise fee. This element also changes the financing of several existing programs. Over the longer term, the TPBF could support other telecommunications-related public benefits, such as services to hearing impaired telephone customers and providing broadband in unserved areas.
2. Retitle and repurpose the Vermont Universal Service Fund to become the “Vermont E-911 Fund.” The existing funding mechanism would apply to all retail telecommunications, but with the



addition of broadband Internet access sold to Vermont customers. The E-911 fund would finance only E-911. The funding level would be set by the Legislature.

3. Eliminate the current capital payments from cable companies to AMOs and replace the loss with funds appropriated from the TPBF. Enact a new PEG capital fee of one percent on the cable revenues of cable companies. The capital fee would be distributed to AMOs through the appropriations process.
4. Repeal the Telephone Personal Property Tax, subject telephone companies to the usual corporate income taxes, and hold the General Fund harmless by a transfer from the TPBF.

Elements 1 and 2 are addressed here as they relate to the VUSF.

Element 1 recommends the creation of a new fee on pole attachments. Pole attachments are the physical points on a telephone pole where cabling and other utility components are attached. The proposal seeks to levy a tax for each attachment on a pole under the premise that the companies subject to the tax would be taxed for their use of public rights-of-way, which is generally where utility poles are placed. Revenues from this tax would be placed in a new fund called the Telecommunications Public Benefits Program. Two programs, the Telecommunications Relay Services (TRS) and Lifeline, would transfer from the current VUSF to the TPBF.

The report recommends that the TPBF would be funded by a fee imposed on attachments to utility poles. The imposition of a new fee would most likely be accomplished by the pole owning utilities. A fee on new pole attachments should be further studied to better understand the costs and administrative burdens it would place on pole owning utilities, broadband providers and state tax collectors. The proposal should also be studied to determine the impacts it would have on broadband deployment and the costs of service for ratepayers.

Element 2 recommends both limiting the programs to be funded by the USF and expanding the services subject to the fee, and as such is directly related to the capacity of the USF. The Internet Freedom from Taxation Act is a federal law that prohibits states from imposing taxes and fees on internet service subscriptions. The PEG Study recommends extending the VUSF fee to broadband subscriptions. The study relies on an exception found in the ITFA:

“This proposal meets the requirements of the 911 exception to the Internet Tax Freedom Act (ITFA), which has an exception for 911 programs. E-911 service is provided to everyone in Vermont who uses telephone service, regardless of provider. That includes “VoIP” telephone service provided “over the top” on a broadband line. If Vermont 1) imposes a charge on Internet access, 2) places the proceeds in a special fund, and 3) appropriates that fund solely to the E-911 program, then that charge would fall within the 911 exception of the ITFA.”⁷

This approach is new and to our knowledge untested in other states. For that reason, the Vermont General Assembly and policy makers may find it beneficial to further study this strategy and interpretation of ITFA before proceeding on this recommendation.

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