

1 H.419

2 Introduced by Representative Sibia of Dover

3 Referred to Committee on

4 Date:

5 Subject: Broadband; commerce; competition; unfair or deceptive acts;

6 consumer protection

7 Statement of purpose of bill as introduced: This bill proposes to establish the

8 Vermont Broadband Consumer Protection and Competition Act.

9 An act relating to broadband consumer protection and competition

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

11 Sec. 1. 9 V.S.A. chapter 63, subchapter 11 is added to read:

12 Subchapter 11. Broadband Consumer Protection and Competition

13 § 2490. TITLE

14 This subchapter shall be known and may be cited as the Vermont

15 Broadband Consumer Protection and Competition Act.

16 § 2490a. PURPOSE

17 The purpose of this subchapter is to promote a thriving broadband market in

18 Vermont free of anticompetitive, unfair, deceptive, or misleading practices in

19 order to protect the public and to encourage fair and honest competition.

1 § 2490b. FINDINGS

2 The General Assembly finds that:

3 (1) Broadband is a critical sector of the overall Vermont economy.

4 (2) Broadband service is essential for supporting economic and
5 educational opportunities; strengthening health and public safety networks; and
6 reinforcing democratic, social, and civic engagement and for allowing
7 Vermonters to benefit from new and innovative internet-based products and
8 services, such as “smart home” energy-saving technologies.

9 (3) Despite considerable public investments in broadband deployment
10 and service, about 18.6 percent of Vermont locations (58,314 locations) do not
11 have access to high-speed broadband service. Many more do not have access
12 to service from more than one broadband provider.

13 (4) Vermont is a rural state with many geographically remote, sparsely
14 populated locations with no or limited access to public transit systems.

15 (5) Those who live far from a town center or regional commercial hub
16 are particularly disadvantaged by the lack of broadband access. They are
17 burdened with the additional time and expense of travelling great distances to
18 either access a broadband connection, such as a public WiFi hotspot, or to
19 physically carry out activities they are unable to do from home, such as online
20 banking and telehealth appointments.

1 (6) The critical need for broadband service coupled with the lack of
2 competition, particularly in “high-cost” areas, creates an imbalance of power
3 between the provider and consumer.

4 (7) The Attorney General, as the chief law enforcement officer in the
5 State, must provide a strong presence in the broadband market and protect and
6 advocate for Vermonters when necessary.

7 (8) All policymakers, law enforcement officers, and regulators must
8 work collaboratively to ensure the market is vibrant, efficient, and competitive
9 and serves as an engine of economic growth and innovation in all four corners
10 of the State.

11 (9) No broadband provider should be permitted to exploit its market
12 position to stifle competition and deprive a consumer of a meaningful choice
13 among broadband providers.

14 (10) Monitoring the broadband market through data collection and
15 analysis will enable State government to identify and respond swiftly and
16 appropriately to market failures or misconduct and promote a healthy
17 economy.

18 (11) A well-functioning broadband marketplace will foster competition,
19 higher wages, lower prices, better service, more consumer choices, further
20 investment, and increased innovation and entrepreneurship.

1 § 2490c. DEFINITIONS

2 As used in this subchapter:

3 (1) “Broadband provider” or “provider” means a business that provides
4 broadband service to any person in Vermont.

5 (2) “Broadband service” or “broadband” means a mass-market retail
6 service by wire or radio in Vermont that provides the capability to transmit
7 data to and receive data from all or substantially all Internet endpoints,
8 including any capabilities that are incidental to and enable the operation of the
9 communications service, but excluding dial-up service.

10 (3) “Consumer” means a person to whom a broadband provider sells
11 broadband service.

12 § 2490d. NET NEUTRALITY

13 Because the free and open flow of information underpins the free and open
14 flow of commerce, beginning on October 1, 2023, a broadband provider shall
15 not sell, offer, or advertise for sale broadband service without a valid
16 certificate of net neutrality compliance from the Secretary of Administration
17 pursuant to 3 V.S.A. § 348.

18 § 2490e. PROHIBITED PRACTICES

19 (a) It shall be an unfair or deceptive act or practice in commerce in
20 violation of section 2453 of this chapter for a broadband provider to engage in
21 any of the following conduct:

1 (1) failing to provide a consumer with broadband service that meets or
2 exceeds the performance characteristics offered and sold to the consumer's
3 service location;

4 (2) failing to reimburse a consumer any installation costs associated
5 with broadband service that is discontinued by the consumer because the
6 service did not meet or exceed the minimum performance characteristics
7 offered and sold to the consumer's service location;

8 (3) engaging in marketing or promotional practices that misrepresent the
9 actual terms and conditions of a broadband service plan or tend to mislead or
10 deceive an actual or prospective consumer;

11 (4) imposing excessive termination fees or other burdensome conditions
12 that unfairly restrict a consumer's ability to discontinue service or purchase
13 service from another provider;

14 (5) charging equipment or service fees that do not reasonably correlate
15 with the cost of the broadband service or equipment provided to a consumer,
16 excluding any State or federal fees;

17 (6) failing to submit broadband availability data in a form and manner
18 prescribed by the Department of Public Service for the purpose of maintaining
19 the State's broadband availability maps under 30 V.S.A. § 202e(e);

20 (7) violating privacy, security, or network management practices
21 applicable to its broadband service; or

1 (8) imposing a predatory data cap, as further defined in subsection (b) of
2 this section.

3 (b) A broadband provider shall not impose a data cap except when tailored
4 for the purpose of reasonable network management, such as managing network
5 congestion. For purposes of this section, “data cap” means a limit on the
6 amount of bits or other units of information a broadband consumer may
7 download or upload during a period of time specified by the provider before
8 the consumer:

9 (1) is charged a fee for additional usage;

10 (2) is subject to an increasing cost per bit or other unit of information;

11 (3) is charged for an incremental block of usage;

12 (4) experiences a reduction of access speed; or

13 (5) is otherwise discouraged or prevented from exceeding.

14 § 2490f. CONSUMER COMPLAINTS

15 (a) For the purpose of creating a single location within State government
16 for the receipt and tracking of consumer complaints regarding broadband
17 service, the Attorney General, in consultation with the Commissioner of Public
18 Service, shall establish and implement a protocol for handling complaints. The
19 protocol shall include a process for maintaining a database that aggregates and
20 tracks the number, nature, disposition status, and resolution time of complaints

1 received directly by State government and indirectly from provider records
2 submitted to the Attorney General under subsection (b) of this section.

3 (b) Beginning on January 1, 2024, a broadband provider shall maintain a
4 complete record of any consumer complaints received regarding its broadband
5 service. The record shall include the total number of complaints received, the
6 nature of each complaint, the disposition of each complaint, the time it took to
7 process and resolve each complaint, and any other relevant information
8 requested by the Attorney General. A provider shall submit a copy of the
9 record of complaints for the preceding year to the Office of the Attorney
10 General annually, beginning on January 1, 2025.

11 (c) As used in this section, “complaint” means any communication
12 primarily expressing a grievance.

13 § 2490g. MONITORING COMPETITION AND PRACTICES

14 (a) The Attorney General shall routinely monitor current and emerging
15 market trends and business practices in the broadband sector and assess their
16 effect, positive or negative, on consumers, workers, businesses, and the
17 broader Vermont economy.

18 (b) Factors to be considered by the Attorney General under this section
19 include the number of broadband providers actively engaged in providing
20 broadband service, market share, ease of market entry, industry consolidation,

1 and any other factors the Attorney General deems relevant to a market
2 analysis.

3 (c) The Attorney General shall periodically review and compare a
4 provider’s “broadband consumer label” for multiple service locations in the
5 provider’s market area. For purposes of this subsection, “broadband consumer
6 label” means the label required to be provided to a consumer at the point of
7 sale, pursuant to the Federal Communications Commission’s Broadband Label
8 Order, FCC 22-86.

9 (d) The Attorney General shall review provider business practices,
10 including data practices, as appropriate, to determine whether any practices
11 negatively affect marginalized or underserved communities or worsen
12 disparities and inequities in the social and economic fabric of our State.

13 (e)(1) To assist the Attorney General with carrying out the purposes of this
14 section, on or before October 1, 2023, and annually thereafter, each broadband
15 provider shall submit a report to the Attorney General, which includes the
16 following information related to its provision of fixed broadband service to
17 Vermont locations:

18 (A) the total number of active broadband service plans;

19 (B) the total number of active wired broadband service plans,
20 categorized by the technology used to deliver the service: digital subscriber
21 line, coaxial cable, fiber-optic, or hybrid fiber coaxial;

1 (C) the total number of active wireless broadband service plans,
2 categorized by the technology used to deliver the service: terrestrial or satellite
3 (geostationary or low-earth orbit), and whether the service is supported by
4 licensed or unlicensed spectrum, or both;

5 (D) the median and mean price, download speed, and upload speed of
6 its active broadband service plans in Vermont, and within each county, if
7 applicable;

8 (E) the number of years the provider has been actively engaged in
9 providing broadband service in Vermont;

10 (F) the broadband availability data submitted to the Department of
11 Public Service under 30 V.S.A. § 202e(e) and the broadband availability and
12 subscription data submitted to the Federal Communications Commission
13 through the Broadband Data Collection System; and

14 (G) any other information deemed relevant by the Attorney General.

15 (2) The report shall be submitted in a form and manner prescribed by the
16 Attorney General.

17 (3) It is unlawful for a provider to knowingly or recklessly make or
18 cause to be made, in a report submitted under this section, a statement that:

19 (A) at the time and in light of the circumstances under which it is
20 made, is false or misleading in a material respect; or

21 (B) is false or misleading due to the omission of a material fact.

1 (4) The accuracy of the information included in the report shall be
2 verified by oath of two of the provider’s executive officers, under penalty of
3 perjury.

4 (5) As used in this section, “recklessly” means consciously disregarding
5 a relevant fact.

6 § 2490h. TRANSPARENCY; INFORMED CHOICES

7 (a) To facilitate informed consumer choices, a broadband provider shall
8 submit to the Attorney General its current policies and practices regarding:

9 (1) network management;

10 (2) security; and

11 (3) privacy.

12 (b) A provider shall submit the information required by this section in a
13 form and manner prescribed by the Attorney General, not less frequently than
14 annually.

15 (c) The Attorney General shall aggregate and disclose the information
16 collected under this section on a publicly available, easily accessible website
17 maintained by the Office of the Attorney General.

18 § 2490i. KEEP VERMONTERS CONNECTED

19 (a) A broadband provider is prohibited from disconnecting any consumer
20 from service, charging unconscionably high prices, or imposing data usage
21 limits during a declared state of emergency under 20 V.S.A. chapter 1,

1 provided that the state of emergency is declared in response to an all-hazards
2 event that will cause financial hardship and the inability of consumers to pay
3 for broadband services.

4 (b) For purposes of this section, a price is unconscionably high if:

5 (1) there is a gross disparity between the price charged during the
6 emergency or seven days prior to the emergency and the price at which the
7 same service was sold or offered for sale in the usual course of business
8 immediately prior to the state of emergency; and

9 (2) the disparity is not substantially attributable to increased prices in the
10 wholesale market or increased costs due to the state of emergency.

11 § 2490j. INVESTIGATIONS; ENFORCEMENT

12 (a) The Attorney General may investigate the business practices of a
13 broadband provider pursuant to the investigatory powers established under this
14 chapter.

15 (b) A person who violates a provision of this subchapter, or a rule adopted
16 pursuant to this subchapter, commits an unlawful act under section 2453 of this
17 chapter.

18 § 2490k. INTERAGENCY COOPERATION

19 (a) The Attorney General, in consultation with the Secretary of
20 Administration, shall develop procedures and best practices for agency
21 cooperation and coordination on matters of overlapping jurisdiction. The

1 primary purpose of this section is to ensure the Attorney General has access to
2 information related to its enforcement authority under this subchapter,
3 including any relevant information maintained by the Department of Public
4 Service, the Vermont Community Broadband Board, the Department of Taxes,
5 and the Agency of Commerce and Community Development.

6 (b) Nothing in this section shall be construed to waive any privilege or
7 protection otherwise afforded information by law due solely to the fact that the
8 information is shared with the Attorney General pursuant to this section.

9 § 2490l. ASSESSMENT

10 To the extent deemed necessary and appropriate by the Attorney General,
11 the costs incurred by the Office of the Attorney General in complying with this
12 subchapter may be assessed against broadband providers on an equitable and
13 practicable basis. The Attorney General shall adopt the assessment rate by
14 rule.

15 § 2490m. CONFIDENTIALITY

16 The Attorney General shall maintain the confidentiality of any information
17 received under this subchapter that the Attorney General determines is exempt
18 from public inspection and copying under the Public Records Act or other
19 applicable law, unless disclosure is ordered by a court.

1 § 2490n. ANNUAL REPORT

2 On or before January 15 of each year, notwithstanding 2 V.S.A. § 20(d), the
3 Attorney General shall submit a report to the General Assembly, which shall
4 include the Attorney General's findings and recommendations related to the
5 current state of competition in the broadband market and whether and to what
6 extent anticompetitive conduct or unfair or deceptive acts or practices in
7 commerce are occurring. The report shall include:

8 (1) a summary of the market-monitoring data collected pursuant to
9 section 2490g of this subchapter;

10 (2) a summary of complaints in the State database established under
11 section 2490f of this subchapter;

12 (3) the total amount collected under section 2490l of this subchapter;

13 (4) a description of any enforcement actions taken pursuant to this
14 subchapter, and any monetary judgments recovered; and

15 (5) recommendations for improving conditions in the broadband market.

16 § 2490o. RULES

17 (a) In addition to the rules otherwise required by this subchapter, the
18 Attorney General may adopt any other rules the Attorney General deems
19 necessary to implement this subchapter, including rules that define in greater
20 detail what constitutes unfair or deceptive conduct under this subchapter.

1 (b) The rules, as well as any finding of unlawful conduct under this
2 subchapter, shall be consistent with the rules, regulations, and decisions of the
3 Federal Trade Commission and the Federal Communications Commission and
4 with federal court interpretations of the Federal Trade Commission Act, as
5 amended, and the Communications Act of 1934, as amended.

6 § 2490p. EFFECT ON OTHER LAWS

7 This subchapter shall not limit other statutory rights of a consumer or
8 statutory obligations of a provider under Vermont law.

9 § 2490q. STATUTORY CONSTRUCTION; SEVERABILITY

10 (a) It is the intent of the General Assembly that the provisions of this
11 subchapter are liberally construed to accomplish its purposes.

12 (b) As provided in 1 V.S.A. § 215, the provisions of this subchapter are
13 severable. If any provision of this subchapter is invalid, or if any application
14 thereof to any person or circumstance is invalid, the invalidity shall not affect
15 other provisions or applications that can be given effect without the invalid
16 provision or application.

17 § 2490r. STATE AUTHORITY

18 Vermont enacts this subchapter pursuant to all inherent State authority
19 under the 10th Amendment of the U.S. Constitution and all relevant authority
20 granted and reserved to the states by Title 15 and Title 47 of the U.S. Code,
21 including the authority to impose requirements necessary to protect public

1 safety and welfare, safeguard the rights of consumers, and enforce antitrust
2 laws.

3 Sec. 2. REPEAL

4 9 V.S.A. § 2466c (concerning the Attorney General's review of the network
5 management practices of broadband providers) is repealed.

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on passage.