

1 H.657

2 Introduced by Representatives Sims of Craftsbury, Anthony of Barre City, and
3 Masland of Thetford

4 Referred to Committee on

5 Date:

6 Subject: Communications; taxes; fees

7 Statement of purpose of bill as introduced: This bill proposes to modernize
8 Vermont's communications taxes and fees to be more competitively neutral
9 and to provide a financial structure that equitably and sustainably finances
10 public benefits related to communications networks in the State.

11 An act relating to the modernization of Vermont's communications taxes
12 and fees

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

14 * * * Sales and Use Tax; Prewritten Computer Software * * *

15 Sec. 1. 32 V.S.A. § 9701(60) is added to read:

16 (60) "Vendor-hosted prewritten computer software" means prewritten
17 computer software that is accessed through the internet or a vendor-hosted
18 server or platform, including where possession of the software is maintained
19 by the vendor or a third party, regardless of:

1 * * * VUSF; Per-Line Contribution Method; Vermont 988 * * *

2 Sec. 5. 30 V.S.A. § 7501(a) is amended to read:

3 (a) It is the purpose of this chapter to create a financial structure that will
4 allow every Vermont household to obtain basic telecommunications service at
5 an affordable price, and to finance that structure with a ~~proportional~~ charge on
6 all telecommunications transactions that interact with the public switched
7 network.

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

9 § 7523. RATE OF CHARGE

10 (a)(1) ~~Beginning on July 1, 2014, the~~ Except as provided in subsection
11 7521(e) of this chapter, which pertains to prepaid wireless telecommunications
12 service, and in subdivision (3) of this subsection, the monthly rate of charge
13 shall be ~~two percent of retail telecommunications service.~~ \$0.70 for each retail
14 access line in service. The number of access lines a telecommunications
15 service provider provides a customer shall be deemed equal to the number of
16 inbound or outbound two-way communications by any technology that the
17 customer can maintain at the same time as provisioned by the provider's
18 service.

19 (2) As used in this section:

20 (A) “Access line” means a wire or wireless connection that provides
21 real-time, two-way voice telecommunications service or interconnected VoIP

1 service to or from any device used by a customer, regardless of technology,
2 that is associated with a 10-digit NPA-NXX number or other unique identifier
3 and with a service location or place of primary use in Vermont and that is
4 capable of accessing the 911 system.

5 (B) “Interconnected VoIP service” means service that:

6 (i) enables real-time, two-way voice communication that
7 originates from and terminates to the customer’s location using internet
8 protocol or any successor protocol;

9 (ii) requires a broadband connection from the customer’s location;

10 (iii) permits end users, generally, to receive calls that originate on
11 the public switched network and to terminate calls to the public switched
12 network; and

13 (iv) requires internet protocol-compatible customer premises
14 equipment.

15 (C) “Place of primary use” means:

16 (i) for mobile telecommunications service, the street address
17 where the customer’s use of the mobile telecommunications service primarily
18 occurs that must be:

19 (I) the residential street address or the primary business street
20 address of the customer; and

1 (II) within the service area of the telecommunications provider
2 with whom the customer contracts for the provision of mobile
3 telecommunications service;

4 (ii) for interconnected VoIP service, the street address where the customer's
5 use of interconnected VoIP service primarily occurs, or a reasonable proxy as
6 determined by the interconnected VoIP service provider, such as the
7 customer's registered location for 911 purposes.

8 (3) Vermont Lifeline subscribers are exempt from paying the charge
9 required by this section.

10 (b) ~~Beginning on July 1, 2019, the rate of charge established under~~
11 ~~subsection (a) of this section shall be increased by four tenths of one percent of~~
12 ~~retail telecommunications service, and the monies collected from this increase~~
13 From the monies collected by the Universal Service Charge under this chapter,
14 17 percent shall be transferred to the Vermont Community Broadband Fund
15 established under section 8083 of this title, and up to \$120,000.00 shall be used
16 to fund a Rural Broadband Technical Assistance Specialist whose duties shall
17 include providing outreach, technical assistance, and other support services to
18 communications union districts established pursuant to chapter 82 of this title
19 and other units of government, nonprofit organizations, cooperatives, and for-
20 profit businesses for the purpose of expanding broadband service to unserved
21 and underserved locations. Support services also may include providing

1 business model templates for various approaches, including formation of or
2 partnership with a cooperative, a communications union district, a rural
3 economic development infrastructure district, an electric utility, or a new or
4 existing ~~Internet~~ internet service provider as operator of the network.

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

9 Sec. 7. 30 V.S.A. § 7521(e)(1) is amended to read:

10 (e)(1) Notwithstanding any other provision of law to the contrary,
11 ~~beginning on January 1, 2020, the~~ a Universal Service Charge of 2.4 percent
12 shall be imposed on all retail sales of prepaid wireless telecommunications
13 service subject to the sales and use tax imposed under 32 V.S.A. chapter 233.
14 The charges shall be collected by sellers or marketplace facilitators collecting
15 sales tax pursuant to 32 V.S.A. § 9713 and remitted to the Department of
16 Taxes in the manner provided under 32 V.S.A. chapter 233. Upon receipt of
17 the charges, the Department of Taxes shall have 30 days to remit the funds to
18 the fiscal agent selected under section 7503 of this chapter. The Commissioner
19 of Taxes shall establish registration and payment procedures applicable to the
20 Universal Service Charge imposed under this subsection consistent with the
21 registration and payment procedures that apply to the sales tax imposed on

1 such services and also consistent with the administrative provisions of
2 32 V.S.A. chapter 151, including any enforcement or collection action
3 available for taxes owed pursuant to that chapter.

4 Sec. 8. 30 V.S.A. § 7511 is amended to read:

5 § 7511. DISTRIBUTION GENERALLY

6 (a)~~(1)~~ As directed by the Commissioner of Public Service, funds collected
7 by the fiscal agent, and interest accruing thereon, shall be distributed as
8 follows:

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

11 ~~(B)~~(2) to support the Vermont telecommunications relay service in
12 the manner provided by section 7512 of this title;

13 ~~(C)~~(3) to support the Vermont Lifeline program in the manner
14 provided by section 7513 of this title;

15 ~~(D)~~(4) to support Enhanced 911 services in the manner provided by
16 section 7514 of this title; ~~and~~

17 ~~(E)~~(5) to support the Vermont 988 Suicide and Crisis Lifeline centers
18 in the manner provided in section 7513a of this title; and

19 (6) to support the Connectivity Fund established in section 7516 of
20 this title; ~~and.~~

1 ~~(2) for fiscal year 2016 only, any personnel or administrative costs~~
2 ~~associated with the Connectivity Initiative shall come from the Connectivity~~
3 ~~Fund, as determined by the Commissioner in consultation with the~~
4 ~~Connectivity Board.~~

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

8 Sec. 9. 30 V.S.A. § 7513a is added to read:

9 § 7513a. VERMONT 988 SUICIDE AND CRISIS LIFELINE

10 The fiscal agent shall make distributions to the Commissioner of Mental
11 Health to fund the operational and capital costs of the Vermont 988 Suicide
12 and Crisis Lifeline centers, within annual limits approved in advance by the
13 General Assembly.

14 * * * Communications Property; Statewide Assessment * * *

15 Sec. 10. INTENT

16 It is the intent of this act to impose an assessment on communications
17 property that promotes equity and administrative efficiency. The specific
18 property valuation method enacted should reflect to the greatest extent
19 practicable the recommendations of the Department of Taxes and industry
20 stakeholders, and the best interests of the public.

1 Sec. 10a. 32 V.S.A. chapter 211, subchapter 6 is amended to read:

2 Subchapter 6. ~~Telephone Companies~~ Communications Service Providers

3 § 8521. IMPOSITION AND RATE OF TAX

4 (a) ~~There is hereby assessed, upon each person or corporation owning or~~
5 ~~operating a telephone line or business within the State, at tax A~~
6 ~~communications service provider doing business in this State shall pay a tax to~~
7 ~~the State~~ equal to 2.37 percent of ~~net book~~ fair market value as of the
8 preceding December 31 of all ~~personal~~ communications property of the
9 taxpayer located within the State. The tax shall be paid to the Commissioner in
10 equal monthly installments on or before the 25th day of each month of each
11 taxable year.

12 (b) ~~For tax years beginning after July 1, 1983, "a person or corporation~~
13 ~~owning or operating a telephone line or business," as used in this chapter, shall~~
14 ~~not include a person or corporation that is engaged in the resale of telephone~~
15 ~~transmission capacity but does not own or operate any telephone lines or~~
16 ~~transmission facilities within the State, but such person or corporation~~
17 ~~engaging in the resale of telephone transmission capacity shall be subject to~~
18 ~~income taxation under chapter 151 of this title~~ As used in this subchapter:

19 (1) "Communications property" means:

20 (A) Tangible facilities that are used to enable the real-time, two-way,
21 electromagnetic transmission of information, such as audio, video, and data,

1 and that is part of a local, state, national, or international communications
2 network, as well as tangible facilities that are part of a cable television system
3 as defined in 30 V.S.A. § 501(2). The term includes wires, cables, conduit,
4 pipes, antennas, poles, wireless towers, machinery, distribution hubs, splitters,
5 switching equipment, routers, servers, power equipment, and any other
6 network equipment.

7 (B) Any lease, license, permit, or other contractual arrangement
8 pursuant to which a communications service provider is authorized to locate
9 tangible communications property on public or private property in Vermont.

10 (2) “Communications service provider” means a person that directly
11 controls communications property by means of ownership, lease agreement, or
12 other contractual arrangement. The term includes incumbent local exchange
13 carriers, competitive local exchange carriers, wireless communications
14 providers, cable television providers, and internet service providers. The term
15 does not include an electric distribution or transmission utility, a person
16 engaged in the resale of voice or broadband internet access service who does
17 not directly own or control communications infrastructure in this State, or a
18 State or municipal entity.

19 (c) The tax imposed by this section shall be in addition to any other taxes
20 imposed by law, including the income tax imposed under chapter 151 of this
21 title.

1 (d) All the administrative provisions of chapter 151 of this title, including
2 those relating to the collection and enforcement of the income tax by the
3 Commissioner, shall apply to the tax imposed by this chapter.

4 (e) ~~There is hereby assessed, upon each person or corporation owning or~~
5 ~~operating a telephone line or business that received in calendar year 1990 at~~
6 ~~least \$20 million in annual gross operating revenues within the State, a tax on~~
7 ~~its entire gross operating revenues from the State for the periods from July 1,~~
8 ~~1991 through June 30, 1992. The tax for each separate fiscal year shall be~~
9 ~~determined by subtracting from an amount equal to 51/4 percent of the~~
10 ~~taxpayer's gross operating revenues from the State for the fiscal year ending~~
11 ~~June 30, 1992, the total amount of tax paid by such persons or corporations~~
12 ~~under subsection (a) of this section during the fiscal year ending June 30, 1992,~~
13 ~~the amount of tax paid by such persons or corporations under chapter 151 of~~
14 ~~this title during the fiscal year ending June 30, 1992. The tax imposed by this~~
15 ~~subsection shall be paid to the Commissioner on or before June 30 of each~~
16 ~~year. The tax imposed by this subsection shall expire June 30, 1992.~~

17 (f) When personal property is transferred during the year from a person or
18 corporation subject to a tax imposed by this subchapter to another person or
19 corporation that operates or will operate a telephone communications line or
20 business in the State:

1 (1) for months beginning after the date of transfer, the transferee shall
2 include the ~~net book~~ fair market value of the transferred property as of the date
3 of transfer in the calculation of the tax due under subsection (a) of this section
4 and the transferor shall exclude such value from its calculation of its tax under
5 subsection (a); and

6 (2) for the month during which the transfer occurs, the transferor shall
7 include the ~~net book~~ fair market value of the transferred property as of the
8 preceding December 31 multiplied by the number of days during the month it
9 owned the property and divided by the total number of days in the month, and
10 the transferee shall include the ~~net book~~ fair market value of the property as of
11 the date of transfer multiplied by the number of days during the month it
12 owned the property divided by the number of days in the month.

13 § 8522. ALTERNATIVE TAX

14 (a) A person ~~or corporation~~ owning or operating a telephone line or
15 business that received in the preceding taxable year less than \$50 million in
16 annual gross operating revenues within the State may, in lieu of the tax
17 imposed in section 8521 of this title and any income tax imposed under chapter
18 151 of this title, elect to pay to the State a tax equal to the percentage as set
19 forth herein of its entire gross operating revenues from its operations within the
20 State for the fiscal year ending June 30. Where the gross operating revenues
21 during the quarter exceed \$250.00 and do not exceed \$1,250.00, the tax shall

1 be ~~2 1/4~~ 2.25 percent; exceed \$1,250.00 and do not exceed \$2,500.00, the tax
2 shall be ~~2 1/2~~ 2.5 percent; exceed \$2,500.00, and do not exceed \$5,000.00, the
3 tax shall be ~~2 3/4~~ 2.75 percent; exceed \$5,000.00 and do not exceed
4 \$10,000.00, the tax shall be 3 percent; and the rate of tax shall be increased ~~1/4~~
5 0.25 of 1 percent for each additional \$5,000.00 or fractional part thereof of
6 such gross operating revenue. However, the rate shall in no event exceed ~~5 1/4~~
7 5.25 percent of the gross operating revenues.

8 (b) The tax imposed by this section shall be paid to the Commissioner ~~no~~
9 not later than 25 days following the last day of the third, sixth, ninth, and 12th
10 month of each taxable year.

11 (c) For any taxable year, a taxpayer shall give notice of its election to pay
12 the tax imposed by this section by filing a quarterly gross receipts tax return ~~no~~
13 not later than 25 days following the last day of the third month of the taxable
14 year. No election to pay the tax imposed by this section shall be made by a
15 taxpayer that did not make the election in the previous year.

16 * * * One Percent Cable Gross Revenue Charge; AMO Capital Costs * * *

17 Sec. 11. 30 V.S.A. § 504 is amended to read:

18 § 504. CERTIFICATES OF PUBLIC GOOD

19 (a) Certificates of public good granted under this chapter shall be for a
20 period of 11 years.

1 (b) Issuance of a certificate shall be after opportunity for hearing and
2 findings by the Commission that the applicant has complied or will comply
3 with requirements adopted by the Commission to ensure that the system
4 provides:

5 (1) designation of adequate channel capacity and appropriate facilities
6 for public, educational, or governmental use;

7 (2) adequate and technically sound facilities and equipment, and signal
8 quality;

9 (3) a reasonably broad range of public, educational, and governmental
10 programming;

11 (4) the prohibition of discrimination among customers of basic service;

12 ~~and~~

13 (5) basic service in a competitive market, and if a competitive market
14 does not exist, that the system provides basic service at reasonable rates
15 determined in accordance with section 218 of this title; and

16 (6) distribution of one percent of the company's gross revenue to the
17 Secretary of State to support the capital expenditures of the State's access
18 media organizations, pursuant to an annual capital expenditure plan prepared
19 by the Vermont Access Network and approved by the Secretary of State.

20 (c) In addition to the requirements set forth in subsection (b) of this section,
21 the Commission shall ensure that the system provides or utilizes:

1 (1) a reasonable quality of service for basic, premium, or otherwise,
2 having regard to available technology, subscriber interest, and cost;

3 (2) construction, including installation, which conforms to all applicable
4 State and federal laws and regulations and the National Electric Safety Code;

5 (3) a competent staff sufficient to provide adequate and prompt service
6 and to respond quickly and comprehensively to customer and Department
7 complaints and problems;

8 (4) unless waived by the Commission, an office that shall be open
9 during usual business hours, and a listed, toll-free telephone number so that
10 complaints and requests for repairs or adjustments may be received; and

11 (5) reasonable rules and policies for line extensions, disconnections,
12 customer deposits, and billing practices.

13 (d) A certificate granted to a company shall represent nonexclusive
14 authority of that company to build and operate a cable television system to
15 serve customers only within specified geographical boundaries. Extension of
16 service beyond those boundaries may be made pursuant to the criteria in
17 section 504 of this title, and the procedures in section 231 of this title.

18 Sec. 12. INTENT; APPLICATION

19 It is the intent of the General Assembly that the one percent gross revenue
20 charge applicable to cable companies under Sec. 11 of this act is in addition to
21 the five percent franchise fee currently distributed for the operational costs of

1 the State’s access media organizations, notwithstanding any law or rule to the
2 contrary. The Public Utility Commission shall ensure the terms and conditions
3 of each cable company’s existing certificate of public good are amended on or
4 before October 1, 2024 to reflect the requirements of this section and Sec. 11
5 of this act.

6 * * * State ROW Charge; Communications Providers * * *

7 Sec. 13. 19 V.S.A. § 26a is amended to read:

8 § 26a. DETERMINATION OF RENT TO BE CHARGED FOR LEASING
9 OR LICENSING STATE-OWNED PROPERTY UNDER THE
10 AGENCY’S JURISDICTION

11 (a) Except as otherwise provided by subsection (b) of this section, or as
12 otherwise provided by law, leases or licenses negotiated by the Agency under
13 5 V.S.A. §§ 204 and 3405 and section 26 and subsection 1703(d) of this title
14 ordinarily shall require the payment of fair market value rent, as determined by
15 the prevailing area market prices for comparable space or property. However,
16 the Agency may lease or license State-owned property under its jurisdiction for
17 less than fair market value when the Agency determines that the proposed
18 occupancy or use serves a public purpose or that there exist other relevant
19 factors, such as a prior course of dealing between the parties, that justify
20 setting rent at less than fair market value.

1 (b) Unless otherwise required by federal law, beginning on or before
2 October 1, 2024, the Agency shall assess, collect, and deposit in the
3 Transportation Fund a reasonable charge or payment with respect to leases or
4 licenses for access to or use of State-owned rights-of-way by providers of
5 broadband or wireless communications facilities or services. ~~The Agency may~~
6 ~~waive such charge or payment in whole or in part if the provider offers to~~
7 ~~provide comparable value to the State so as to meet the public good as~~
8 ~~determined by the Agency and the Department of Public Service. For the~~
9 ~~purposes of this section, the term “comparable value to the State” shall be~~
10 ~~construed broadly to further the State’s interest in ubiquitous broadband and~~
11 ~~wireless service availability at reasonable cost. Any waiver of charges or~~
12 ~~payments for comparable value to the State granted by the Agency may not~~
13 ~~exceed five years. Thereafter, the Agency may extend any waiver granted for~~
14 ~~an additional period not to exceed five years if the Agency makes affirmative~~
15 ~~written findings demonstrating that the State has received and will continue to~~
16 ~~receive value that is comparable to the value to the provider of the waiver, or it~~
17 ~~may revise the terms of the waiver in order to do so. The charge or payment~~
18 shall not apply to a communications union district or to an internet service
19 provider that qualifies as an “eligible provider” under 30 V.S.A. § 8082(4) if
20 the lease or license for access to or use of State-owned rights of way is part of

1 a “universal service plan” as defined in 30 V.S.A. § 8082(12), as certified by
2 the Vermont Community Broadband Board.

3 (c) Nothing in this section shall authorize the Agency to impose a charge or
4 payment for the use of a highway right-of-way that is not otherwise authorized
5 or required by State or federal law.

6 (d) Nothing in this section shall be construed to impair any contractual
7 rights existing on June 9, 2007. The State shall have no authority under this
8 section to waive any sums due to a railroad. The State shall also not offer any
9 grants or waivers of charges for any new broadband installations in segments
10 of rail corridor where an operating railroad has installed or allowed installation
11 of fiber optic facilities prior to June 9, 2007 unless the State offers equivalent
12 terms and conditions to the owner or owners of existing fiber optic facilities.

13 (e) Notwithstanding 2 V.S.A. § 20(d), beginning on January 1, 2025, and
14 annually thereafter, the Agency shall submit a written report to the General
15 Assembly itemizing all charges and payments collected under this section.

16 * * * Effective Dates * * *

17 Sec. 14. EFFECTIVE DATES

18 This act shall take effect on July 1, 2024, except:

19 (1) Secs. 1–4 (prewritten computer software) shall take effect on June 1,
20 2025.

1 (2) Secs. 5–9 (VUSF contribution method; 988 funding) shall take effect
2 on January 1, 2025.