

NO. 79. AN ACT RELATING TO ESTABLISHING THE VERMONT
TELECOMMUNICATIONS AUTHORITY TO ADVANCE
BROADBAND AND WIRELESS COMMUNICATIONS
INFRASTRUCTURE THROUGHOUT THE STATE.

(H.248)

* * * Vermont Telecommunications Authority * * *

Sec. 1. 30 V.S.A. chapter 91 is added to read:

CHAPTER 91. VERMONT TELECOMMUNICATIONS AUTHORITY

§ 8060. LEGISLATIVE FINDINGS AND PURPOSE

(a) The general assembly finds that:

(1) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, but significant gaps remain.

(3) A new level of creative and innovative strategies (including partnerships and collaborations among and between state entities, nonprofit organizations, municipalities, the federal government, and the private sector) is necessary to extend and complete broadband coverage in the state, and to

ensure that Vermont maintains a telecommunications infrastructure that allows residents and businesses to compete fairly in the national and global economy.

(4) When such partnerships and collaborations fail to achieve the goal of providing high-quality broadband access and service to all areas and households, or when some areas of the state fall behind significantly in the variety and quality of services readily available in the state, it is necessary for an authority of the state to support and facilitate the construction of infrastructure and access to broadband service through financial and other incentives.

(5) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state. The general assembly recognizes these locally based broadband providers for their contributions to date in providing broadband service to unserved areas despite the limitations on their financial resources.

(6) The universal availability of adequate mobile telecommunications and broadband services promotes the general good of the state.

(b) Therefore, it is the goal of the general assembly to ensure:

(1) that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010;

(2) the ubiquitous availability of mobile telecommunication services including voice and high-speed data throughout the state by the end of the year 2010.

(3) the investment in telecommunications infrastructure in the state which will support the best available and economically feasible service capabilities.

(4) that telecommunications and broadband infrastructure in all areas of the state is continuously upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the state.

(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.

§ 8061. ESTABLISHMENT OF AUTHORITY; ORGANIZATION

(a) The Vermont telecommunications authority is hereby created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The authority shall have a board of directors of 11 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 manager of the Vermont economic development authority or his or her designee;

(4) Two at-large members appointed by the speaker of the house, who may not be members of the general assembly at the time of appointment;

(5) Two at-large members appointed by the committee on committees of the senate, who may not be members of the general assembly at the time of appointment;

(6) Two at-large members appointed by the governor, who may not be employees or officers of the state at the time of appointment.

(7) Two at-large members appointed jointly by the governor, the speaker of the house, and the president pro tem of the senate, who shall be chair and vice chair of the board of directors, and who may not be members of the general assembly or employees or officers of the state at the time of appointment.

(c) The authority's powers are vested in the board of directors, and a quorum shall consist of six members. No action of the authority shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least five members vote in favor of the action.

(d) In making appointments of at-large 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 six at-large members, the chair, and the vice chair may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in-kind or financial support from the authority. The six at-large members, the chair and the vice chair shall serve terms of four years beginning July 1 of the year of appointment. However, two of the at-large members first appointed by the speaker, and two of the at-large members first appointed by the committee on committees shall serve an initial term of two years. Any vacancy occurring among the at-large members, the chair or the vice chair shall be filled by the respective appointing authority and be filled for the balance of the unexpired term. A member may be reappointed.

(e) The authority shall hire and employ an executive director who shall serve as the authority's chief administrative officer and shall direct and supervise the authority's administrative affairs and technical activities in accordance with any rules, regulations, and policies set forth by the authority. In addition to any other duties, the executive director shall:

(1) Attend all meetings of the authority, act as its secretary, and keep minutes of its proceedings;

(2) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the authority;

(3) Make an annual report to the authority documenting the actions of the authority and such other reports as the authority may request;

(4) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter.

(f) Except for those members otherwise regularly employed by the state, the compensation of the authority's members shall be the same as that provided by 32 V.S.A. § 1010(a). All members of the authority, 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.

§ 8062. PURPOSE; POWERS AND DUTIES

(a) To achieve the goals under subsection 8060(b) of this title the authority is directed:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to areas

unserved, and develop and maintain an inventory of infrastructure necessary for provision of these services to the areas unserved;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to 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;

(4) to coordinate and establish public-private partnerships to extend availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(5) to support and facilitate local initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) to provide resources to local, regional, public and private entities in the form of loans, grants, and other incentives funded through bonded capital and other resources;

(7) to solicit and consider input from local municipal authorities, districts designated by the federal economic development administration, regional planning commissions, and metropolitan planning organizations on specific projects the authority plans to undertake;

(8) to 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 whatever steps are consistent with the powers granted the authority under this chapter 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 utilization of these licenses as would promote the general good of the state; and

(9) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities.

(b) The authority shall have the following powers, which shall be exercised to further the authority's purpose, and shall have all other powers necessary to carry out the duties imposed on the authority by law:

(1) to establish partnerships and contracts with providers of telecommunications services and related facilities to serve unserved people and areas of the state; and to provide financial and other assistance to providers who agree in return to provide mobile telecommunications or broadband services to unserved people and areas of the state; and to facilitate directly or indirectly the efforts of other entities to advance the availability of mobile voice and high speed data or broadband services.

(2) to provide financial assistance in the form of loans, grants, guarantees, other financial instruments, or, in accordance with section 8064 of this title, to issue bonds backed by project revenues, the state, or its political subdivisions, or both, for the purpose of building infrastructure capable of delivering mobile telecommunications and broadband services to all Vermonters;

(3) to consult, contract, or partner with the Vermont economic development authority and the Vermont municipal bond bank to provide financial assistance for purposes authorized by this chapter;

(4) to coordinate access to and pursue regional and local revolving loan funding and all state, federal, and private funding that is available for telecommunications infrastructure, including financial assistance that may be available to rural economic area partnership (REAP) zones, as designated by the U.S. Department of Agriculture and to contract with financial assistance providers;

(5) to receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5.

(6) to incorporate one or more nonprofit corporations in Vermont to fulfill the goals of this chapter. Such corporations shall be empowered to borrow money and to receive and accept gifts, grants, or contributions from any source, subject to the provisions of 32 V.S.A. § 5. The board of directors of any nonprofit corporation created under this subsection shall be the board of

directors of the authority. The corporation shall be organized and operate under the nonprofit corporation laws of the state of Vermont. The authority may contract with the corporation to provide staff and management needs of the corporation:

(7) to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to 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;

(8) to own, acquire, sell, trade, and lease equipment, facilities, and other infrastructure that could be accessed and used by multiple service providers, the state and local governments, including fiber optic cables, towers, shelters, easements, rights of way, and wireless spectrum of frequencies; provided that any agreement by the authority to sell infrastructure that is capable of use by more than one service provider shall contain conditions that will ensure continued shared use or co-location at reasonable rates;

(9) in collaboration with the Vermont municipal bond bank, to act as agent and advisor for municipalities that wish to offer municipally backed financial assistance, consistent with chapter 53 of Title 24, to develop telecommunications infrastructure or services in their communities;

(10) to apply for and obtain required permits for the construction of telecommunications infrastructure;

(11) in collaboration with the agency of administration, to lead the management of marketing of state properties to encourage and expedite collocation of infrastructure;

(12) to consult with agencies and departments on establishing charges or payments for use by wireless telecommunications and broadband service providers of state property, easements, and rights-of-way to the extent such charges or payments are required by law, and establish the criteria for waiver of such charges or payments when providers offer to furnish comparable value to the state to meet the public good;

(13) to sue and be sued in its own name and plead and be impleaded;

(14) to administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority; and

(15) to borrow money and give other evidence of indebtedness or obligations and security consistent with the authority's purpose and needs.

(c) Nothing in this chapter shall be construed to grant power to the authority to offer the sale of telecommunications services to the public.

§ 8063. INTERAGENCY COOPERATION AND ASSISTANCE

(a) Other departments and agencies of state government shall assist and cooperate with the authority and shall make available to it information and data as needed to assist the authority in carrying out its duties. The secretary of administration shall establish protocols and agreements among the authority and departments and agencies of the state for this purpose. Nothing in this

section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemptions to the public records act or under other laws due solely to the fact that the information or data is shared with the authority pursuant to this section.

(b) With the consent of the governor, and under terms and conditions of transfer approved by the governor, a state agency shall transfer ownership and control to the authority of the agency's interest in any telecommunications facility designated by the authority as appropriate to assist the authority in meeting its statutory purposes. "Telecommunications facility" includes antennae, towers and other support structures, wires and cables, and other equipment.

(c) To the extent that the authority issues loans, it shall consult with the Vermont economic development authority to ensure that the lending activities and programs of each are coordinated and are not in competition. The authority shall, through contract or agreement, engage the assistance of the Vermont economic development authority in planning and administering lending activities and in evaluating credit worthiness of the borrower for purposes of this chapter.

(d) The authority shall also strive to identify, consult with, and coordinate lending programs with the administrators of local and regional revolving loan funds in order to leverage the lending capacity of the authority and the regional

and local funds, and to ensure that the lending activities of the authority and the revolving loan funds are not in competition.

(e) No instrumentality of the state shall sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without prior notice to and approval of the authority.

§ 8064. BONDS AND NOTES

(a)(1) The authority may issue its negotiable notes and bonds in such principal amount as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the authority, establishment of reserves to secure the notes and bonds including the reserve funds created under section 8065 of this title, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. However, the bonds or notes of the authority outstanding at any one time shall not exceed \$40,000,000.00. No bonds shall be issued under this section without the prior approval of the governor and the state treasurer or their respective designees. In addition, before the authority may initially exercise its bonding authority granted by this section, it shall submit to the emergency board of the state a current business plan, including an explanation of the bond issue or issues initially proposed.

(2) The authority shall have the power, from time to time, to issue bonds and notes, to renew, defease, and refund notes and bonds to pay bonds and

notes, including the interest thereon, and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds and notes to be refunded have or have not matured, and to issue bonds and notes partly to refund bonds then outstanding and partly for any of its corporate purposes.

(3) Except as may otherwise be expressly provided by resolution of the authority, every issue of its notes and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(b) The notes and bonds shall be authorized by resolution or resolutions of the authority, shall bear such date or dates and shall mature at such time or times as the resolution or resolutions may provide, except that no bond shall mature more than 30 years from the date of its issue. The bonds may be issued as serial bonds or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates or the manner of determining such rate or rates, as provided in sections 1881–1887 of Title 24, be in such denominations, be in such form, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places within or without the state, and be subject to such terms of redemption as the resolution or resolutions may provide; provided, however, that at the time of the authorization of the issuance of such bonds or notes the authority

determines in such resolution that the authority will derive receipts, revenues, or other income from the facilities or projects to be financed with the proceeds of such bonds or notes sufficient to provide, together with all other available receipts, revenues, and income of the authority, for the payment of such bonds or notes and the payment of all costs and expenses incurred by the authority with respect to the program or purpose for which such bonds or notes are issued and all other expenses of the authority incurred under this title. The notes and bonds of the authority may be sold by the authority at public or private sale, at such price or prices as the authority shall determine.

(c) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues of the authority to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with note holders or bondholders as may then exist;

(2) pledging all or any part of the assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with note holders or bondholders as may then exist;

(3) the use and disposition of the revenues of the authority and payments upon other obligations held by the authority;

(4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(7) the procedure, if any, by which the terms of any contract with note holders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which consent may be given;

(8) limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;

(9) vesting in a trustee or trustees, within or without the state, such property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;

(10) defining the acts or omissions to act that shall constitute a default in the obligations and duties of the authority to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a

receiver; provided, however, that the rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this chapter; and

(11) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(d) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof.

(e) Bonds, notes, and other obligations authorized under this chapter may, in the discretion of the authority, be issued with such terms as will cause the interest thereon to be subject to federal income taxation. To the extent required for the sale of the obligations, the authority may register such obligations under applicable federal and state securities laws. No person executing any bonds, notes, and other obligations issued by the authority or others under authority of this chapter shall be subject to any personal liability or accountability by reason of the issuance thereof. The authority shall indemnify any person who shall have served as a member, officer, or employee of the authority against financial loss or litigation expense arising out of or in

connection with any claim or suit involving allegations that pecuniary harm has been sustained as a result of any transaction authorized by this chapter, unless such person is found by a final judicial determination not to have acted in good faith and for a purpose that the person reasonably believed to be lawful and in the best interest of the authority.

(f) The authority, subject to such agreements with note holders or bondholders as may then exist, shall have power out of any funds available therefore to purchase notes or bonds of the authority, which shall thereupon be cancelled, at a price not exceeding:

(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon; or

(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(g) In the discretion of the authority, the notes or bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the state. The trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the note holders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers and the custody, safeguarding, and application

of all moneys. The authority may provide by such trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under such trust indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the authority. If the notes or bonds shall be secured by a trust indenture, the note holders and bondholders shall have no authority to appoint a separate trustee to represent them.

(h) Any law to the contrary notwithstanding, a bond or note issued under this chapter is fully negotiable for all purposes of sections 1-101 et seq. of Title 9A, and each holder or owner of a bond or note or of any coupon appurtenant thereto, by accepting the bond or note or coupon, shall be conclusively deemed to have agreed that the bond, note, or coupon is fully negotiable for those purposes.

(i) Any provision of this chapter or of any other law or any recitals in any bonds or notes issued under this chapter to the contrary notwithstanding, all bonds, notes, and interest coupons appertaining thereto issued by the authority shall have and are hereby declared to have all the qualities and incidents, including negotiability, of investment securities under sections 1-101 et seq. of Title 9A, but no provision of those sections respecting the filing of a financing statement to perfect a security interest shall be applicable to any security

interest created in connection with the issuance of the bonds, notes, or coupons.

(j) In case any of the members, executive director, or officers of the authority whose signatures appear on any notes or bonds or coupons shall cease to be members, executive director, or officers before the delivery of such notes or bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such members, executive director, or officers had remained in office until such delivery.

(k) The authority may enter into one or more agreements for the exchange of interest rates, cash flows, or payments to reduce net borrowing costs, to achieve desirable net effective interest rates in connection with its issuance and sale of debt obligations, and to provide for an efficient means of debt management.

§ 8065. RESERVE FUNDS

(a) The authority may create and establish one or more special funds, herein referred to as “debt service reserve funds,” and shall pay into each such debt service reserve fund:

(1) any moneys appropriated and made available by the state for the purpose of such fund;

(2) any proceeds of the sale of notes or bonds, to the extent provided in the resolution or resolutions of the authority authorizing the issuance thereof;

and

(3) any other moneys which may be made available to the authority for the purpose of such fund from any other source or sources.

(b) All moneys held in any debt service reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds secured in whole or in part by such fund or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the debt service reserve requirement established by resolution of the authority for such fund as hereafter provided except for the purpose of making with respect to bonds secured in whole or in part by such fund payments, when due, of principal, interest, redemption premiums, and the sinking fund payments hereinafter mentioned for the payment of which other moneys of the authority are not available. Any income or interest earned by, or increment to, any debt service reserve fund due to the investment thereof may be transferred by the authority to other funds or accounts of the authority to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve requirement for such fund.

(c) The authority shall not at any time issue bonds or notes secured in whole or in part by a debt service reserve fund if upon the issuance of such

bonds or notes the amount in such debt service reserve fund will be less than the debt service reserve requirement established by resolution of the authority for such fund, unless the authority at the time of issuance of such bonds shall deposit in such fund from the proceeds of the bonds or notes so to be issued, or from other sources, an amount that, together with the amount then in such fund, will not be less than the debt service reserve requirement established for such fund. The debt service reserve requirement for any debt service reserve fund shall be established by resolution of the authority prior to the issuance of any bonds or notes secured in whole or in part by such fund and shall not be required to exceed “maximum debt service.” For the purposes of this section, the term “maximum debt service” shall mean, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future fiscal year of the authority, of annual debt service on the bonds of the authority secured or to be secured in whole or in part by such debt service reserve fund, such annual debt service for any fiscal year being the amount of money equal to the aggregate of:

(1) all interest payable during such fiscal year on all bonds secured in whole or in part by such debt service reserve fund outstanding on the date of computation; plus

(2) the principal amount of all such bonds outstanding on such date of computation that mature during such fiscal year; plus

(3) all amounts specified in any resolution of the authority authorizing such bonds as payable during such fiscal year as a sinking fund payment with respect to any of such bonds that mature after such fiscal year.

(d) In computing the amount of the debt service reserve funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par if purchased at par or at amortized value, as such term is defined by resolution of the authority, if purchased at other than par.

(e) In order to assure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the authority, there may be appropriated annually and paid to the authority for deposit in each such fund such sum as shall be certified by the chair of the authority to the governor, the president of the senate, and the speaker of the house as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The chair shall annually, on or about February 1, make and deliver to the governor, the president of the senate, and the speaker of the house his or her certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the authority during the then current state fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which state funds may be appropriated

pursuant to this subsection shall not exceed \$40,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the authority in contravention of the Constitution of the United States of America.

(f) The authority shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

§ 8066. REFUNDING OBLIGATIONS – ISSUANCE AND SALE

(a) The authority may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding that have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of the authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority in respect of the same shall be governed by the provisions of this chapter that relate to the issuance of obligations, insofar as those provisions may be appropriate.

(b) Refunding obligations issued as provided in this section may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding obligations. Pending the application of the proceeds of any refunding

obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing them to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America, and which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon will be required for the purposes intended.

§ 8067. REMEDIES OF BONDHOLDERS AND NOTE HOLDERS

(a) In the event that the authority defaults in the payment of principal or of interest on any bonds or notes issued under this chapter after they become due, whether at maturity or upon call for redemption, and the default continues for a period of 30 days, or in the event that the authority fails or refuses to comply with the provisions of this chapter or defaults in any agreement made with the holders of an issue of bonds or notes of the authority, the holders of 25 percent in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the secretary of state and proved or acknowledged in the same manner as a deed to be

recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of 25 percent in principal amount of such bonds or notes then outstanding shall, in his or her or its own name:

(1) enforce all rights of the bondholders or note holders, including the right to require the authority to carry out any agreements with the holders of such bonds or notes and to perform its duties under this chapter;

(2) enforce all rights of the bondholders or note holders, including the right to collect and enforce the payment of amounts due to the authority, so as to carry out any contract as to, or pledge of revenues, and to require the authority to carry out and perform the terms of any contract with the holders of such bonds or notes or its duties under this chapter;

(3) bring suit upon all or any part of such bonds or notes;

(4) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(5) by action or suit, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of such bonds or notes;

(6) declare all such bonds or notes due and payable, and, if all defaults shall be made good, with the consent of the holders of 25 percent of the principal amount of such bonds or notes then outstanding to annul the declaration and its consequences.

(c) The trustee shall in addition to the foregoing have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or note holders in the enforcement and protection of their rights.

(d) Before declaring the principal of bonds or notes due and payable, the trustee shall first give 30 days' notice in writing to the governor, to the authority, and to the attorney general of the state.

(e) The superior courts or courts with equity jurisdiction shall have jurisdiction of any suit, action, or proceeding by the trustee on behalf of bondholders or note holders.

§ 8068. PLEDGE OF THE STATE

The state does hereby pledge to and agree with the holders of the notes and bonds issued under this chapter that the state will not limit or restrict the rights hereby vested in the authority to perform its obligations and to fulfill the terms of any agreement made with the holders of its bonds or notes or in any way impair the rights and remedies of the holders until the notes and bonds, together with interest thereon, and interest on any unpaid installments of interest, are fully met, paid, and discharged. The authority is authorized to execute this pledge and agreement of the state in any agreement with the holders of the notes or bonds.

§ 8069. SOVEREIGN IMMUNITY; CREDIT OF STATE NOT PLEDGED

The authority shall have the benefit of sovereign immunity to the same

extent as the state of Vermont. Members, officers, employees, and the executive director of the authority shall be deemed employees of the state for purposes of 12 V.S.A. chapter 189 (tort claims against state) and 3 V.S.A. chapter 29 (claims against state employees). Notwithstanding the foregoing, obligations issued under the provisions of this chapter shall not be deemed to constitute a debt or liability or obligation of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any political subdivision but shall be payable solely from the revenues or assets of the authority. Each obligation issued under this chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

§ 8070. NOTES AND BONDS AS LEGAL INVESTMENTS

Notwithstanding any other law, the state and all public officers, governmental units, and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, all credit unions, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any

sinking funds, moneys, or other funds belonging to them or within their control in any bonds or notes issued under this chapter, and the bonds or notes are authorized security for any and all public deposits.

§ 8071. ANNUAL REPORTS; AUDIT

(a) On or before the last day of January of each calendar year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. Each report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants; the cost shall be considered an expense of the authority and a copy shall be filed with the state treasurer.

(b) The auditor of accounts of the state and his or her duly authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, sinking funds, investments, and any other matters relating to its financial statements.

§ 8072. ANNUAL OVERSIGHT REPORTS

(a) In addition to the annual and audit reports required by section 8071 of this title, the authority shall provide annual oversight reports to the general assembly on or before January 1 each year. Each annual oversight report shall contain:

(1) An inventory of the locations within the state in which mobile telecommunications and broadband service are currently available.

(2) A report of the progress made to date by the authority in developing its capabilities to undertake or sponsor projects that expand the availability of mobile telecommunications and broadband service.

(3) A projected outlook on progress by the authority, including:

(A) An assessment of the authority's capabilities to perform the powers granted the authority, and to contribute to the improvement of broadband service availability and mobile telecommunications service coverage in the state; and

(B) An assessment of the foreseeable extent of broadband service availability and mobile telecommunications service coverage in the state.

(4) A summary of the status and results of any competitive solicitation processes undertaken or planned for the purpose of increasing broadband service availability and mobile telecommunications coverage in the state, including:

(A) an assessment of the level of interest among potential service providers;

(B) a summary of the numbers and types of entities participating;

(C) a description of measures taken or under consideration by the authority to enhance the level of interest among potential bidders; and

(D) terms of any arrangements entered between the authority and service providers.

(5) A description of all authority activities to develop or facilitate development of telecommunications infrastructure that furthers the objective of this chapter.

(6) Financial statements of the authority, a summary of expenditures by the authority since inception, and a forecast of expenditures.

(7) A summary of any financial commitments made by the authority.

(8) A list and summary of all contracts and agreements entered into by the authority, and a list and summary of any rail right-of-way agreements entered into by the authority including any waivers of charges for comparable value to the state granted under 19 V.S.A. § 26a.

(9) A summary of any and all instances in which service providers that have entered into contracts or binding commitments with the authority have materially defaulted, been unable to fulfill their commitments, or have requested or been granted relief from contractual or binding commitments.

(10) A current business plan for the authority, including an explanation of significant changes subsequent to the most recent previous report.

(11) A list and description of all actions taken by the authority to transfer control of state-owned telecommunications facilities to the authority.

(12) A description of the extent of the authority's assistance to and participation in proceedings before local zoning and development review boards, district environmental commissions, or project applicants seeking to construct or alter communications facilities located in the state.

(13) Recommendations, if any, for further legislative action to promote the objectives of this chapter.

(b) The authority shall deliver its annual report of January 1, 2011 by electronic mail to the home e-mail address of all members of the general assembly in office on that date and members-elect on that date with printed copies provided by regular mail to any member or member-elect lacking electronic mail services.

§ 8073. AUTHORIZATION TO ACCEPT APPROPRIATED MONIES

The authority is authorized to accept and expend such monies as may be appropriated or approved from time to time by the general assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of reserves or contingency funds to be available for the payment of the principal of and the interest on any bonds, notes, or other obligations of the authority.

§ 8074. TAX EXEMPTION

(a) All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes, franchise fees, and special assessments of whatever nature of the state or any subdivision. All bonds or notes issued by the authority or a municipality under this chapter are issued by a body corporate and public of this state and for an essential public and governmental purpose, and those bonds and notes and the interest thereon and the income therefrom and all activities of the authority and fees, charges, funds, revenues, incomes, and other moneys of the authority, whether or not pledged or available to pay or secure the payment of those bonds or notes, or interest thereon, are exempt from all taxation, franchise fees, or special assessments of whatever kind except for transfer, inheritance, and estate taxes. This section shall not prevent a municipality from assessing and collecting from the authority any excavation or construction fees otherwise charged by the municipality.

(b) The authority is not required to make or file any reports, statements, or informational returns required of any other bodies corporate except as provided in this chapter.

(c) Buildings and structures of the authority exempted from property taxation under this section shall be considered “state-owned property” for the purposes of the state payment in lieu of taxes (PILOT) provisions of subchapter 4 of chapter 123 of Title 32.

§ 8075. LIBERAL CONSTRUCTION

Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers that the authority might otherwise have under any laws of this state, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws.

§ 8076. INCONSISTENT PROVISIONS IN OTHER LAWS SUPERSEDED

Insofar as the provisions of sections 8064 through 8074 of this title are inconsistent with the provisions of any other law, general, special, or local, the provisions of this chapter shall be controlling.

§ 8077. ESTABLISHMENT OF MINIMUM TECHNICAL SERVICE

CHARACTERISTIC OBJECTIVES

(a) The department of public service, shall, as part of the state telecommunications plan prepared pursuant to section 202d of this title, identify minimum technical service characteristics which ought to be available as part of broadband services commonly sold to residential and small business users throughout the state. For the purposes of this chapter, “broadband” means high speed internet access. The department shall consider the performance characteristics of broadband services needed to support current and emerging applications of broadband services.

(b) The authority shall give priority in its activities toward projects which expand the availability of broadband services that meet the minimum technical services characteristics established by the state telecommunications plan.

(c) Until the department of public service adopts a revision to the state telecommunications plan, the authority shall give priority to the expansion of broadband services which deploy equipment capable of a data transmission rate of not less than 3 megabits per second and offer a service plan with a data transmission rate of not less than 1.5 megabits per second in at least one direction to unserved areas.

§ 8078. SELECTION OF PROPOSALS TO PROVIDE SERVICE;

COMPETITIVE PROCESS

(a) Broadband service; competitive process.

(1) For the purposes of this chapter, a premise is “served” with broadband service if it has access to mass-market broadband services meeting the minimum technical characteristics identified pursuant to section 8077 of this title. For the purposes of this chapter, with respect to broadband service, “unserved area” shall mean a contiguous geographic area of the state, without regard to municipal boundaries or size of geographic area, which contains premises that can obtain basic telephone service but are not served.

(2) By not later than December 1, 2007, the authority shall identify all served and unserved areas within the state. The authority may rely on readily and publicly available information to estimate the extent of these areas.

(3) The authority shall seek to enable the development of networks and telecommunications infrastructure necessary to support provision of mass-market broadband services, in all unserved areas of the state, which meet or exceed the minimum technical characteristics identified pursuant to section 8077 of this title.

(4) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate unserved areas by the end of the year 2010 through the development of telecommunications facilities or through binding commitments from service providers to offer broadband service to all

unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by January 31, 2008. The authority shall solicit and accept broadband service expansion commitments in a manner that allows small locally based broadband providers a reasonable opportunity to contribute toward realization of the policy objectives of this chapter. In evaluating proposals, the authority shall consider:

(A) the proposed data transfer rates and other data transmission characteristics of services which would be available to consumers;

(B) the price to consumers of services;

(C) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(D) whether the proposal would utilize the best available technology which is economically feasible; and

(E) the ability to achieve the authority's objectives in the most cost-effective manner.

(5) The authority may support or undertake projects that enable provision of broadband service in geographic areas currently served; provided that:

(A) such projects are the most cost-effective method for providing broadband services in nearby unserved areas; and

(B) before undertaking such projects, the authority makes reasonable effort to distinguish served areas and populations from unserved areas and populations within the geographic area that the project would serve, including recognition and consideration of known or probable service extensions or upgrades.

(b) Commercial mobile radio (cellular) service, competitive process.

(1) The authority shall seek to eliminate areas without access to commercial mobile radio service licensed by the Federal Communications Commission by 2010 through the construction of facilities and binding commitments from commercial mobile radio service providers.

(2) The authority shall seek to expand access to all services that utilize the technical standards which are commonly in use for providing voice and data services through commercial mobile radio service.

(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate areas without coverage from a provider of commercial mobile radio services within the state of Vermont by 2010 through the development of telecommunications facilities and through binding commitments from service providers to expand service, including all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by January 31, 2008. In evaluating proposals, the authority shall consider the

extent to which a proposal meets coverage objectives while limiting environmental impact and providing opportunities for future development of wireless communications services.

* * * Appropriation; North-Link * * *

Sec. 1a. APPROPRIATION; NORTHLINK

It is the intention of the general assembly to appropriate the amount of \$500,000.00 in each of fiscal years 2009 and 2010 for construction and advancement of the North-Link project of Northern Enterprises, Inc. for the purposes of this act.

[Sec. 2. DELETED.]

* * * Broadband Grant Program * * *

Sec. 3. BROADBAND DEVELOPMENT GRANT PROGRAM

(a) Such sums as are appropriated by the general assembly may be utilized by the Vermont telecommunications authority to fund broadband development grants as authorized by this section.

(b) The authority may award grants to municipalities, telecommunications infrastructure developers, and service providers in an amount not to exceed \$100,000.00 for any project.

(c) The authority shall select projects that will provide broadband service in areas of the state that do not currently have broadband service or projects that provide one or more Wi-Fi hotspots in municipalities without a Wi-Fi hotspot located in area open to and commonly frequented by members of the general

public. If appropriated funds are available, the authority shall grant at least \$50,000.00 annually to projects that provide one or more Wi-Fi hotspots. The authority shall select projects that:

(1) Provide availability of broadband service to all residents and businesses throughout a logical and contiguous service area; or

(2) Provide for the establishment of new Wi-Fi hotspots available to the general public.

(d) The authority shall use a competitive application process to award grants. When evaluating proposals to provide broadband service throughout an unserved area, the authority shall consider the proposed price to consumers for the service, the proposed data transfer rates, the cost to the consumers of any new construction, equipment installation service, or facility required for the connection, and the degree to which the grant is required to make the project financially sustainable. When evaluating proposals to establish new Wi-Fi hotspots, the authority shall give preference to Wi-Fi hotspot proposals which provide at least limited free usage to the public. When evaluating proposals to provide broadband service throughout an unserved area, the authority shall give preference to applications from service providers which provide broadband service in Vermont and have fewer than 125 employees at the time of the application and which demonstrate that their proposed project is technically feasible and economically viable with the assistance of the program.

(e) The authority may award grants in one or more rounds, including separate rounds to fund Wi-Fi hotspots and expansion of broadband service. The authority may combine the award of a grant provided under this section with any other financial assistance that the authority is authorized to provide under section 8061 of Title 30. In lieu of a grant to an applicant, the authority may transfer funds to:

(1) the Vermont economic development authority to be used to guarantee a loan made by the Vermont economic development authority to the applicant under the technology infrastructure financing program adopted pursuant to subchapter 10 of chapter 12 of Title 10; or

(2) the Vermont municipal bond bank to be used to guarantee a loan made by the Vermont municipal bond bank to the applicant pursuant to subchapter 5 of chapter 119 of Title 24 for the purpose of constructing or acquiring communications infrastructure necessary for the provision of broadband service.

(f) Each applicant shall identify the equipment, facilities, or services to be purchased with the grant. The authority shall establish award contracts with each recipient specifying performance requirements. For failure to perform during the specified period or for failure to provide service for the minimum period, the authority may, after notice and opportunity to correct the failure, take ownership of any equipment or facilities for which grant funds were used to purchase.

* * * Public Safety Pilot Project * * *

Sec. 3a. TELECOMMUNICATIONS; PILOT PROJECT; NORTHEAST
KINGDOM, NEW HAMPSHIRE, AND CANADA

(a) Notwithstanding any provision of law to the contrary, the department of information and innovation, in consultation with the lieutenant governor, with input from interested economic development districts and public safety providers in the Northeast Kingdom of Vermont, western New Hampshire, and the Province of Quebec in Canada, is hereby authorized and directed to develop a pilot project to identify the cost, obstacles and effectiveness of developing next generation wireless and broadband services to rural communities, which may include a satellite enabled system, serving rural communities in northeastern Vermont, northwestern New Hampshire, and the southern portions of the Province of Quebec. To accomplish this purpose, the department is authorized to accept in kind contributions and grants from providers capable of deploying this technology, to utilize federal funds from any source as authorized by the funding source, and to expend a portion of its budget to develop the necessary terrestrial infrastructure to support satellite enabled communications.

(b) The commissioner of the department of information and innovation shall report the status of the pilot project to the senate committee on economic development, housing and general affairs and the house committee on

commerce on or before January 15, 2008, and annually thereafter until such time as the demonstration project is complete.

* * * Municipal Communications Plant and Service * * *

Sec. 4. Title 24 of chapter 54 is added to read:

CHAPTER 54. COMMUNICATIONS PLANT AND SERVICE

§ 1911. DEFINITIONS

The following terms when used in this chapter shall have the following meaning:

(1) “Acquire” shall mean to purchase, to acquire by eminent domain, to hire, to lease, to construct, to reconstruct, or to replace.

(2) “Communications plant” shall mean any and all parts of any communications system owned by the municipality, whether using wires, cables, fiber optics, wireless, other technologies, or a combination thereof, and used for the purpose of transporting or storing information, in whatever forms, directions, and media, together with any improvements thereto hereafter constructed or acquired, and all other facilities, equipment, and appurtenances necessary or appropriate to such system. However, the term “communications plant” and any regulatory implications or any restrictions under this chapter regarding either “communications plant” or “communications service” shall not apply to facilities or portions of any communications facilities intended for use by, and solely used by, the municipality and the municipality’s own

officers and employees in the operation of municipal departments or systems of which such communications are merely an ancillary component.

(3) “Communications service” shall include ownership, operation, and utilization of a communications plant within or without the corporate limits of the municipality to transport or store information in any form and medium.

(4) “Improve” shall mean to acquire or construct any improvement, whether consisting of real or personal property.

(5) “Improvement” shall mean any extension, betterment, addition, alteration, reconstruction, and extraordinary repair, equipping, or reequipping of the communications plant of the municipality.

§ 1912. COMMUNICATIONS PLANT; AUTHORITY TO ACQUIRE,

CONSTRUCT, OPERATE, IMPROVE, EXTEND, AND BETTER.

(a) A municipality is authorized and empowered to own, maintain, operate, improve, and extend, or otherwise acquire, and to sell, lease, or otherwise dispose of, in accordance with and in any situation or manner not prohibited by law, its communications plant for the furnishing of communications services within or without the corporate limits of the municipality, for public, domestic, commercial, and industrial use, and for the provision of communications service. For the aforesaid purposes, the municipality may hire, lease, purchase, own, hold, and acquire by contract, agreement, or eminent domain proceedings any buildings, land, rights-of-way, and any other real property necessary or convenient to the operation of the communications plant, and may use any

public highway over which it may be necessary or desirable to pass with the poles and wire of the same, provided that the use of such public highway for the purpose of public travel is not thereby unnecessarily impaired. These powers may be exercised through a taking by eminent domain in the manner prescribed by law. All of the foregoing powers are in addition to and not in substitution for or in limitation of any other powers conferred by law.

(b) Before a municipality may sell any service using its communications plant subject to public service board jurisdiction and for which a certificate of public good is required under chapter 5 or 13 of Title 30, it shall obtain a certificate of public good for such service. Each such certificate of public good shall be nonexclusive and shall not contain terms or conditions more favorable than those imposed on existing certificate holders authorized to serve the municipality.

§ 1913. COMMUNICATIONS PLANT; OPERATION AND REGULATION

(a) A municipality shall operate its communications plant in accordance with the applicable state and federal law and regulation, and chapter 53 of Title 24, relating to municipal indebtedness, with regard to the financing, improvements, expansion, and disposal of the municipal communications plant and its operations. However, the powers conferred by such provisions of law shall be supplemental to, construed in harmony with, and not in restriction of, the powers conferred in this chapter.

(b) A municipality's operation of any communications plant shall be supported solely by the revenues derived from the operation of such communications plant, except that portion which is used for its own municipal purposes.

(c) A municipality may finance any capital improvement related to its operation of such communications plant for the benefit of the people of the municipality in accordance with the provisions of chapter 53 of Title 24, provided that revenue-backed bonds shall be paid from net revenues derived from the operation of the communications plant.

(d) Any restriction regarding the maximum outstanding debt that may be issued in the form of general obligation bonds shall not restrict the issuance of any bonds issued by a municipality and payable out of the net revenues from the operation of a public utility project under subchapter 2 of chapter 53 of Title 24.

(e) To the extent that a municipality constructs communication infrastructure with the intent of providing communications services, whether wholesale or retail, the municipality shall ensure that any and all losses from these businesses, or in the event these businesses are abandoned or curtailed, any and all costs associated with the investment in communications infrastructure, are not borne by the municipality's taxpayers.

§ 1914. VALIDATION OF BONDS VOTED FOR COMMUNICATIONS

CONSTRUCTION

No action shall be brought directly or indirectly attacking, questioning or in any manner contesting the legality or validity of bonds, issued or unissued, voted by any municipality, after six months from the date upon which voters in such municipal entity met pursuant to warning and voting affirmatively to issue bonds to defray costs of communications improvements or upon vote of a question of rescission thereof, whichever occurs later. This section shall be liberally construed to effect the legislative purpose to validate and make certain the validity of bonds issued or authorized by municipalities for communications system purposes, and to bar every right to question in any manner the validity of bonds voted for such purposes, and to bar every remedy therefore, notwithstanding any defects or irregularities, jurisdictional, or otherwise, after the expiration of the six-month period.

Sec. 5. 24 V.S.A. § 1789 is added to read:

§ 1789. ALTERNATIVE FINANCING OF ASSETS

(a) A municipality, including a fire district, either singly or as a participant in an interlocal contract entered into under sections 4901 and 4902 of this title, may acquire personal property, fixtures, technology and intellectual property by means of leases, lease-purchase agreements, installment sales agreements, and similar agreements wherein payment and performance on the part of the municipality is conditioned expressly upon the annual approval by the municipality of an appropriation sufficient to pay when next due rents, charges, and other payments accruing under such leases and agreements.

(b) The legislative body of the municipality shall enter into leases and agreements identified in subsection (a) of this section on behalf of the municipality and under such terms as it deems to be in the best interest of the municipality.

(c) The undertaking of a municipality to make payments under a lease or agreement identified in subsection (a) of this section shall not be a general or special obligation of the municipality, but shall be treated as a current operating expense. Payments made or to be made under such lease or agreement shall not be taken into account in calculating the debt limit of a municipality for any purpose.

* * * Cable Line Extension Requirements * * *

Sec. 5a. 30 V.S.A. § 517 is added to read:

§ 517. LINE EXTENSIONS

(a) A company may enter into agreements under this section with government, nonprofit, or private entities, including but not limited to projects authorized or affiliated with the Vermont telecommunications authority, a municipality or fire district pursuant to section 2601 of Title 20, or a regional aggregation and deployment project, to satisfy cable television line extension requirements.

(b) Upon petition of a company, the board shall modify the line extensions that a company would otherwise be required to construct if the company agrees to undertake alternative actions including but not limited to the extension of

facilities that support alternative technologies for delivering broadband to users. Copies of the petition shall be filed with the department and the Vermont telecommunications authority. The board shall approve such alternative methods of satisfying line extension requirements after notice and opportunity for hearing if it finds the petition promotes the general good of the state. In reaching its determination, the board shall consider whether the company's proposal:

(1) is consistent with the activities and initiatives of the Vermont telecommunications authority;

(2) is likely to provide broadband access to a greater number of unserved consumers than would the foregone cable television line extension requirements;

(3) supports the expansion of broadband services at prices and service levels comparable to those commonly available throughout the state, but not less than the minimum technical service characteristics required by section 8077 of this title;

(4) provides a fair balancing of the benefits to the public compared to benefits realized by the company; and

(5) the modified line-extension obligations will not unreasonably affect the time at which customers to whom a company would otherwise be obligated to extend cable services will have access to broadband services.

(c) This section shall not apply to line extensions previously identified and planned for construction as of the effective date of this section.

(d) The board shall not require a company to overbuild another company, or provide cable television service to locations served by another company or to which another company is required to extend cable television service.

(e) Notwithstanding any other provision of this section, the board may require the construction of cable television line extensions when a company receives a bona fide request for service from a reasonable number of verified customers or with reasonable contributions in aid of construction from customers.

(f) Notwithstanding any other provision of this section, the line extension construction obligation for additional miles identified in Paragraph 41 of Comcast Communication's certificate of public good, granted by the public service board, of September 27, 2006, may be modified only with the approval of the board.

Sec. 5b. REVISIONS TO CABLE LINE EXTENSION POLICIES

The public service board shall, in consultation with interested parties, revise its cable television line extension requirements no later than December 1, 2008. In so revising, the board shall consider:

(1) the effect of the establishment of the Vermont telecommunications authority and the other changes in law and policy contained in this act;

(2) the convergence of technologies and the availability of different modes of delivery for video programming and broadband services;

(3) fair treatment for competing providers of services; and

(4) the public interest in making a broad range of cable television services available to customers.

* * * Board Rules on Pole Attachments * * *

Sec. 6. 30 V.S.A. § 209(g) is added to read:

(g) For the purposes of board rules on attachments to poles owned by companies subject to regulation under this title, broadband service providers shall be considered “attaching entities” with equivalent rights to attach facilities as those provided to “attaching entities” in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the board. The board shall adopt rules in accordance with chapter 25 of Title 3 to further implement this section. The rules shall be aimed at furthering the state’s interest in ubiquitous deployment of mobile telecommunications and broadband services within the state.

* * * Rights-of-Way Usage * * *

Sec. 7. 30 V.S.A. § 2513 is amended to read:

§ 2513. LINES ALONG RAILROAD TRACKS; WIRELESS AND OTHER
TELECOMMUNICATIONS FACILITIES

(a) A company subject to the jurisdiction of the public service board may erect and maintain its telecommunications or electric transmission and distribution lines and facilities along the sides of railroad tracks within the limits of lands owned or held by a railroad on paying reasonable compensation to the railroad. If they cannot agree upon the amount of reasonable compensation, it shall be determined by the transportation board which shall ascertain the compensation.

(b) Wireless telecommunications and broadband facilities may be erected and maintained within the limits of lands owned or held by a railroad in the same manner as other utility facilities.

(c) For purposes of this section, “broadband” shall have the same definition as in the rules adopted by the public service board for purposes of attachment to utility poles.

Sec. 8. 5 V.S.A. § 3431 is amended to read:

§ 3431. RAILROAD RIGHTS-OF-WAY

Notwithstanding the provisions of section 213 of Title 1, when railroad operations cease on railroad rights-of-way owned by the state or municipality the title or interest held by the state or municipality in such rights-of-way shall be retained by the state or municipality for future transportation purposes and such other purposes as are not inconsistent with future transportation purposes; except that such rights-of-way shall not be used by members of the general public without permission of the state or municipality. The state or municipality shall allow abutting farm operations to use the land over which the rights-of-way pass for agricultural purposes. Unless use and occupancy of railroad rights-of-way adversely affect railroad safety, broadband facilities and wireless and other telecommunications facilities that are installed along or within the railroad right-of-way in compliance with applicable operations and safety standards at the time of installation are consistent with existing and future transportation purposes.

Sec. 9. 30 V.S.A. § 2502 is amended to read:

§ 2502. LINES OR WIRES ALONG HIGHWAYS; WIRELESS
TELECOMMUNICATIONS FACILITIES; BROADBAND
FACILITIES CONSTRUCTION; RESTRICTION

Lines of telegraph, telephone, and electric wires, as well as two-way wireless telecommunications facilities and broadband facilities, may, subject to the provisions of section 1111 of Title 19, be constructed and maintained by a person or corporation upon or under a highway, in such manner as not to interfere with repairs of such highway or the public convenience in traveling upon or using the same.

Sec. 10. 19 V.S.A. § 26a is amended to read:

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

(a) Except as otherwise provided by subsection (b) of this section, or as otherwise provided by law, leases or licenses negotiated by the agency under sections 204 and 3405 of Title 5 and section 26 of this title ordinarily shall require the payment of fair market value rent, as determined by the prevailing area market prices for comparable space or property. However, the agency may lease or license state-owned property under its jurisdiction for less than fair market value when the agency determines that the proposed occupancy or use serves a public purpose or that there exist other relevant factors, such as a

prior course of dealing between the parties, that justify setting rent at less than fair market value.

(b) Unless otherwise required by federal law, the agency shall assess, collect and deposit in the transportation fund a reasonable charge or payment with respect to leases or licenses for access to or use of state-owned rights-of-way by providers of broadband or wireless communications facilities or services. The Vermont telecommunications authority, established by chapter 91 of Title 30, may waive such charge or payment in whole or in part if the provider offers to provide comparable value to the state so as to meet the public good as determined by the authority. For the purposes of this section, the terms “comparable value to the state” shall be construed broadly to further the state’s interest in ubiquitous broadband and wireless service availability at reasonable cost. Any waiver of charges or payments for comparable value to the state granted by the authority may not exceed five years. Thereafter, the authority may extend any waiver granted for an additional period not to exceed five years if the authority makes affirmative written findings demonstrating that the state has received and will continue to receive value that is comparable to the value to the provider of the waiver, or it may revise the terms of the waiver in order to do so. The authority, in consultation with the agency of transportation, shall adopt rules under chapter 25 of Title 3 to implement this section. For the purpose of establishing rules to implement chapter 91 of Title 30 by July 1, 2007, or as soon thereafter as possible, the authority is

authorized to adopt initial rules under this section using emergency rulemaking procedures of chapter 25 of Title 3. Any emergency rules initially adopted may remain in effect longer than 120 days, but in no event shall they remain in effect for more than six months.

(c) Nothing in this section shall authorize the agency to impose a charge or payment for the use of a highway right-of-way which is not otherwise authorized or required by state or federal law.

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

Sec. 11. [DELETED]

* * * Act 250, Sec. 248, and Municipal Permitting * * *

Sec. 12. 10 V.S.A. § 6001c is amended to read:

§ 6001c. JURISDICTION OVER BROADCAST AND COMMUNICATION

SUPPORT STRUCTURES AND RELATED IMPROVEMENTS

In addition to other applicable law, any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the highest point of an attached existing structure or 50 feet, or more, above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes, shall be a development under this chapter, independent of the acreage involved. If jurisdiction is triggered for such a support structure, then jurisdiction will also extend to the construction of improvements ancillary to the support structure, including buildings, broadcast or communication equipment, foundation pads, cables, wires, antennas or hardware, and all means of ingress and egress to the support structure. To the extent that future improvements are not ancillary to the support structure and do not involve an additional support structure, those improvements shall not be considered a development, unless they would be considered a development under this chapter in the absence of this section. The criteria and procedures for obtaining a permit under this section shall be the same as for any other

development.

Sec. 13. 10 V.S.A. § 6001(26) is amended to read:

(26) “Telecommunications facility” means a support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, above the highest point of an attached existing structure or 50 feet or more above ground level in the case of a proposed new support structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county or state purposes.

Sec. 14. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached.

Sec.15. 24 V.S.A. § 4412(6) is amended and (8) and (9) are added to read:

(6) Heights of ~~certain~~ renewable energy resource structures. The height of ~~antenna structures~~, wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high, any of which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation. ~~However, if an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, "downhill ski area" means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports. In addition, the regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, may be exempt from review under this chapter according to the provisions of that section.~~

(8) Communications antennae and facilities.

(A) Except to the extent by-laws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more

than eight square feet, and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

(B) If an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, institutional, nonprofit or public purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, “downhill ski area” means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports.

(C) The regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal bylaw review under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section.

(D) A municipality may regulate communications towers, antennae and related facilities in its bylaws provided that such regulations do not have the purpose or effect of being inconsistent with subdivisions (A) through (C) of this subdivision (8).

(9) De minimis telecommunications impacts. An officer or entity designated by the municipality shall review telecommunications facilities applications, and upon determining that a particular application will impose no

impact or de minimis impact upon any criteria established in the bylaws, shall approve the application.

Sec. 15a. 24 V.S.A. § 4414 is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

* * *

(12) Wireless telecommunications facilities and ancillary improvements.

A municipality may adopt bylaws to regulate wireless telecommunications facilities and ancillary improvements in a manner consistent with state or federal law. These bylaws may include requiring the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements, and may establish requirements that a bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

Sec. 16. 30 V.S.A. § 248(n) is added to read:

(n)(1) No company as defined in section 201 of this title and no person as defined in 10 V.S.A. § 6001(14) may place or allow the placement of wireless communications facilities on an electric transmission or generation facility located in this state, including a net-metered system, without receiving a certificate of public good from the public service board pursuant to this subsection. The public service board may issue a certificate of public good for the placement of wireless communications facilities on electric transmission and generation facilities if such placement is in compliance with the criteria of this section and board rules or orders implementing this section. In developing such rules and orders the board:

(A) may waive the requirements of this section that are not applicable to wireless telecommunication facilities, including but not limited to criteria that are generally applicable to public service companies as defined in this title;

(B) may modify notice and hearing requirements of this title as it deems appropriate;

(C) shall seek to simplify the application and review process as appropriate; and

(D) shall be aimed at furthering the state's interest in ubiquitous mobile telecommunications and broadband service in the state.

(2) Notwithstanding subdivision (1)(B) of this subsection, if the board

finds that a petition filed pursuant to this subsection does not raise a significant issue with respect to the criteria enumerated in subdivisions (b)(1), (3), (4), (5) and (8) of this section, the board shall issue a certificate of public good without a hearing. If the board fails to issue a final decision or identify a significant issue with regard to a completed petition made under this section within 60 days of its filing with the clerk of the board and service to the director of public advocacy for the department of public service, the petition is deemed approved by operation of law. The rules required by this subsection shall be adopted within six months of the effective date of this section, and rules under this section may be adopted on an emergency basis to comply with the dates required by this section. For purposes of this subsection, “wireless communication facilities” include antennae, related equipment, and equipment shelter.

Sec. 17. 30 V.S.A. § 248a is added to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR MULTIPLE

TELECOMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant in a single application seeks approval for the construction or installation within three years of three or more telecommunications facilities as part of an interconnected network the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may

grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title.

(b) For the purposes of this section:

(1) “Telecommunications facility” means any support structure extending more than 50 feet above the ground that is proposed for construction or installation which is primarily for communications purposes and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes.

(2) Telecommunications facilities are “part of an interconnected network” if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence.

(c) Before the public service board issues a certificate of public good under this section, it shall find that, in the aggregate:

(1) the proposed facilities will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10; and

(2) unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected

municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a substantial issue, the board shall issue a final determination on an application

filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a local zoning permit or a permit under the provisions of chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be

resolved by the public service board, subject to appeal as provided by section 12 of this title.

(i) Effective July 1, 2010, no new applications for certificates of public good under this section may be considered by the board.

Sec. 17a. 30 V.S.A. § 227d(b)(5) is amended to read:

(5) The carrier shall limit its prices as follows:

(A) the carrier shall not increase its price for basic exchange telecommunications service during the first year following such election and, during the second and third years following the end of the year in which the carrier has made such election, the carrier shall not increase its price for basic exchange telecommunications service by more than nine percent or by \$1.50, whichever is less;

(B) the carrier shall not increase its prices for local measured service during the first two years following such election;

(C) the carrier shall not increase its price for nonbasic telecommunications services by more than nine percent during the first two years following such election; provided that, for the purposes of this section, nonbasic telecommunications services shall mean any optional telecommunications services other than basic exchange telecommunications services and local measured service that were included in the carrier's intrastate tariff at the time of the election;

(D) the carrier shall not increase its intrastate switched access rates for the three years following the end of the year in which the carrier has made such election.

Sec. 17b. Sec. 2 of No. 73 of the Acts of 2005 (repeal of section 227d of Title 30) is amended to read:

Sec. 2. REPEAL

30 V.S.A. § 227d shall be repealed on ~~July 1~~ December 31, 2008.

* * * Role of Electric Utilities * * *

Sec. 18. ROLE OF VERMONT'S ELECTRIC UTILITIES TO FURTHER
TELECOMMUNICATIONS DEPLOYMENT THROUGHOUT
VERMONT

The public service board shall convene a proceeding within 60 days of the effective date of this act to examine regulatory policy regarding the use or role of Vermont's electric utilities to facilitate deployment of telecommunications infrastructure and services, whether wireless, broadband, or otherwise, throughout the state and take whatever action the board finds is consistent with the public good and within its existing authority. The board shall provide notice of the proceeding to the state's electric utilities and certificated telecommunications carriers. The department of public service shall provide a report to the general assembly by January 15, 2008 with the department's recommendations for any necessary legislative action.

Sec. 18a. LEGISLATIVE COMMUNICATION ON NETWORK
MODERNIZATION CAPABILITIES

The speaker of the house, the president pro tempore of the senate, the chair of the senate committee on economic development, housing and general affairs, and the chair of the house committee on commerce are authorized and directed to communicate to the public service board and the department of public service the strong recommendation of the general assembly that any company seeking to acquire the assets and network of Verizon New England Inc. have the capabilities and intentions to furnish broadband services that are sufficient to meet the rapidly evolving needs of Vermont residents, businesses, and institutions.

Sec. 19. STUDY OF EFFECT ON LAND USE LAW

(a) There is established a study committee on broadband and mobile telecommunications facilities, to consist of the following, who shall be experts in municipal and regional planning and development: a representative of the natural resources board, a municipal official designated by the league of cities and towns, a representative of a regional planning commission designated by the Vermont association of planning and development agencies, a representative of the department of public service, and one representative each of the broadband and the mobile telecommunications businesses appointed by the governor.

(b) The study committee shall review the pertinent parts of the state's municipal, regional, and state-level regulatory and planning processes that are involved in making broadband and mobile telecommunications services available to all the citizens of the state and shall develop recommendations that will allow the expeditious deployment of broadband and mobile telecommunications services in a manner acceptable to the communities of the state. As part of this review, the committee shall consider and evaluate the likely effects of enactment of this act including an assessment of the actual and foreseeable land use impacts associated with broadband service availability and mobile telecommunications service coverage in the state.

(c) The committee shall be entitled to the administrative services of the department of public service. By no later than January 15, 2008, the study committee shall present its recommendations together with any appropriate suggestions for legislative change to the house and senate committees on natural resources and energy, the senate committee on economic development, housing and general affairs, and the house committee on commerce.

Sec. 20. EFFECTIVE DATE

This act shall take effect from passage.

Approved: June 9, 2007