

DPS Summary of H.248
9/27/07

THE VERMONT TELECOMMUNICATIONS AUTHORITY

- The Vermont Telecommunications Authority (VTA) is established by H.248 to promote the ubiquitous deployment of wireless and broadband (high-speed internet) service in Vermont. The Authority will be governed by a board of directors consisting of:
 - (1) the state treasurer or designee;
 - (2) the secretary of administration or designee;
 - (3) the manager of the Vermont economic development authority or 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.
- Appointees must have expertise in telecommunications technology, regulatory law and policy, transportation rights-of-way, finance, and environmental permitting. Appointees may not have a financial interest in, or be owners or employees of, a broadband or cellular service business and they may not seek in-kind or financial support from the authority.
- At-large board members, the Chair and the Vice Chair serve for a term of four (4) years, but the first appointments by the Speaker and Committee on Committees shall serve for two (2) years. Terms commence on July 1 of the year of appointment.
- A quorum consists of six (6) of the eleven (11) members. VTA action must be approved by a majority of those present and voting, with a minimum of at least five (5) members voting in favor of an action.
- The VTA is directed to hire and employ an executive director to oversee the VTA's day-to-day affairs, manage its accounts, and prepare all reports---annual or otherwise---for the authority. The executive director is also the secretary to the VTA board.
- The VTA powers and duties are broad and include:

- issue revenue bonds up to \$40M to fund broadband and wireless telecommunications projects
- gather data on wireless and broadband infrastructure and services
- provide financial assistance in the form of loans, grants, guarantees and other financial instruments to fill in gaps in wireless and broadband coverage
- incorporate one or more non-profits to take advantage of grants and other financing available only to non-profits
- own, lease, and contract for telecommunications facilities and services for unserved areas
- provide assistance to municipalities to deploy infrastructure and attract services
- waive fees required for access to state-owned transportation rights of way for broadband and wireless telecommunications providers in exchange for comparable value to the State
- The Authority may not sell retail telecommunications services to the public
- All state agencies must cooperate with the VTA and share information and data with it. The Secretary of Administration must establish protocols and agreements for state agencies to fulfill the information and data sharing requirement. Confidential or privileged information otherwise exempt from disclosure under the Vermont Public Records Act does not lose its protected or exempt status solely because it is shared with the VTA.
 - State telecommunications property may be transferred to the VTA with consent of, and under terms and conditions provided by, the Governor.
 - VTA loans must be done in coordination and through an agreement with VEDA.
 - VTA must “strive” to consult and coordinate with local and regional revolving loan fund administrators so as to prevent competition in lending activities by the VTA.
 - No instrumentality of the state may sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without notice to and approval of the VTA.
- The VTA is directed to provide the General Assembly with an annual report of its activities towards achieving the goals of ubiquitous wireless communications and broadband coverage in the State.
 - The report must also include information on financing provided by the VTA, a list and summary of agreements relating to rail rights of way and whether and how fees for use of those ROWs have been waived. The report must also contain recommendations, if any, for additional legislative action to promote the objectives and mission of the VTA.

- The annual report required on January 31, 2011 must be sent by electronic mail to members of the General Assembly, and if a member lacks email, by regular mail.
- Property owned by the VTA is tax exempt like other state-owned property. Thus, the VTA is exempt from state and local taxes, franchise fees and special assessments. Bonds and notes used to fund essential government functions are likewise tax-exempt.
 - The VTA must pay any construction or excavation fees charged by a municipality, however. Any VTA-owned building or structures shall be considered state-owned property for the purposes of the state's PILOT program under Title 32.
- The Public Service Department is charged with identifying the minimum technical standards for broadband (high-speed internet) service as part of its telecommunications planning process. The VTA must give priority to projects that meet the standard set by the DPS Telecommunications Plan. Until the Plan is updated, however, the standard the VTA must use is equipment with a data transmission rate of not less than 3 megabits per second with a service plan that offers a data transmission rate of not less than 1.5 megabits per second in at least one direction.
- The VTA must use a competitive process to fund both wireless communications and broadband projects. This section establishes criteria for the process the VTA must use, and it requires the VTA to determine, by December 1, 2007, which areas of the state are unserved and underserved with broadband access.

THE BROADBAND GRANT PROGRAM

- The broadband grant program will be administered by the VTA, which is authorized to provide grants up to \$100,000 to municipalities, service providers, and telecommunications infrastructure developers to help get broadband coverage where it is needed. Selection of grantees must be done on a competitive basis. In addition, the VTA may award \$50,000 or more annually to fund generally available Wi-Fi hotspots. Applications from service providers with fewer than 125 employees must be favored.
- In lieu of grants, the VTA may give some of the broadband grant money to VEDA to guarantee loans to an applicant under VEDA's technology infrastructure financing program or to the municipal bond bank to guarantee a loan used for construction or acquisition of broadband communications infrastructure.

NEW MUNICIPAL AUTHORITY TO FUND AND OPERATE COMMUNICATIONS PLANT AND SERVICES

- A new chapter of Title 24 (chapter 54) authorizes municipalities to finance, own and provide broadband and telecommunications service and infrastructure without needing a charter

change. The language is similar to that used in the charters of Morrisville and the City of Burlington to accomplish the same purpose.

- State laws on licensing of these facilities and services under Title 30 still apply, and taxpayers must be held harmless for any losses the municipality incurs from deploying infrastructure or services.
- A new section of Title 24, § 1789, allows municipalities, either singly or with other municipal entities, to acquire communications infrastructure, intellectual property, technology, and other property through creative means like interlocal agreements, leases, or lease-purchase agreements. The new section expands municipal authority in a way that will help facilitate broadband and other communications infrastructure development.

STATE RIGHTS OF WAY AND UTILITY POLE ATTACHMENTS

- Lines Along Railroad ROWS– 30 V.S.A. § 2513 gives broadband providers the same rights to use rail rights of way as wireless providers. “Broadband” is given the same meaning as that used for purposes of PSB pole attachment rules.
- Railroad ROWS – 5 V.S.A. § 3431 clarifies that broadband, wireless, and other telecommunications facilities may be placed in state-owned rail ROWs, even ROWs that are currently unused by the railroads.
- Highway ROWS – 30 V.S.A. § 2502 gives broadband facilities the same rights as utilities, wireless, and other telecommunications companies to use state-owned highway ROWs. Permits issued pursuant to 19 V.S.A. § 1111 to perform work in the ROW are still required.
- Section 10 of H.248 changes the way charges for use of state-owned ROWs are determined when a broadband or wireless provider seeks access.
 - It does not authorize charges for access where not currently required by existing state or federal law.
 - The new scheme gives the rate-making authority to the VTA in consultation with the Agency of Transportation (AOT).
 - The rates or charges must be established through a public rulemaking process, and the VTA may use the emergency rulemaking procedures already established by law.
 - AOT continues to receive the funds, but the rules adopted by the VTA may allow waiver of charges if the provider agrees to give something of comparable value to the State in exchange for ROW access/use. Waivers are limited to a five-year period.
 - Any charges and waiver under this section is limited to state-owned ROWs and may not affect monies due a railroad under existing agreements.

- Pole attachment rules must be revised by the PSB to give broadband providers same access to utility poles as utilities, even if the providers are not subject to PSB jurisdiction as a cable tv company, electric utility, or telecommunications service provider

LAND USE PERMITTING AMENDMENTS FOR COMMUNICATIONS FACILITIES

- Act 250 trigger in 10 V.S.A. § 6001c for communications support structures is changed from 20 feet to 50 feet above the ground in the case of new support structures. Two statutory amendments were needed to effectuate the change and avoid rule amendments by the Natural Resources Board Land Use Panel.
- Small Communications Antennae and De Minimis Determinations: The bill made changes to the permitting requirements for small antennae used mostly by WISPS (wireless internet service providers) to deploy service throughout a given area.
 - If an antenna meets the statutory size requirements, no permit is required unless the hosting structure is a protected historic landmark or on the national historic register.
 - In addition, towns that regulate telecommunications facilities, whether through zoning or a stand-alone ordinance, are required to review applications for siting telecommunications facilities to determine if they have de minimis impact. If the reviewer concludes the proposed facilities have a de minimis impact the application must be approved.
- A Title 30 CPG for placement of wireless communications facilities on electric generation and transmission facilities, including net metered facilities, is now required in all cases under a new subsection of § 248 (30 V.S.A. § 248(n)). Wireless facilities include antennae, related equipment, and equipment shelter. The PSB must, within six months of the effective date of H.248, issue rules to implement the subsection, and it must simplify the application process under § 248 for these facilities. In addition, the PSB is authorized to:
 - waive the requirements of § 248 that are not applicable to wireless telecommunication facilities, including but not limited to criteria that are generally applicable to public service companies under T.30; and
 - modify notice and hearing requirements as PSB deems appropriate
 - The PSB is directed to issue a CPG without a hearing if it finds that a petition filed under this new subsection does not raise a significant issue with respect to the criteria in § 248(b)(1), (3), (4), (5) and (8). If the PSB fails to issue a final decision or find a significant issue within 60 days of the filing of the petition and service to DPS, then the petition is deemed granted by operation of law.
- A new process before the PSB is created to license, by way of a CPG, telecommunications towers over 50 feet. The new statute, § 248a, is an optional process for developers/

providers/the new Telecommunications Authority to obtain approval for siting three or more facilities within three years.

- The towers must be part of an interconnected network, which is defined as: facilities that 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.
- The PSB must analyze the proposed facilities in the aggregate to determine whether they will have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, after giving due consideration to the relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10.
- Unless good cause to find otherwise exists, the PSB must give substantial deference in making its determination to the land conservation measures in the plans of the affected municipalities, as well as the recommendations of the municipal and regional planning commissions regarding their respective municipal and regional plans.
- A final determination by the PSB must be made within 90 days of the completed application or within 180 days if the PSB finds a significant issue with respect to the substantive criteria in the new section.
- If local or Act 250 permits exist on the land subject to the proposed facilities, the PSB must harmonize, to the greatest extent possible, the conditions in those permits with the CPG.

CABLE TELEVISION LINE EXTENSIONS

- Cable TV line extensions are now governed by a new statute, § 517 of Title 30. Companies are permitted to satisfy their line extension obligations through partnerships or contracts with other entities, including the new Vermont Telecommunications Authority.
 - A company may petition the PSB to modify the company's existing line extension obligations through use of alternative technologies if the proposal promotes the general good.
 - The statute provides criteria that the PSB must consider when deciding whether the proposal meets the general good standard. A key criterion for consideration is whether the company's proposal is likely provide broadband access to a greater number of unserved customers than would the forgone line extension requirements.
 - The statute expressly exempts from the modification provision any line extension that has been identified and planned for construction as of the effective date of the legislation.

- The statute codifies the policy on overbuilds by prohibiting the PSB from requiring line extensions to homes and businesses already served by another company or for which a line extension has already been planned for construction.
- Cable TV line extension rules must be revised by PSB no later than 12/1/08. The following must be considered when revising the rules:
 - the effect of the establishment of the Vermont Telecommunications Authority;
 - technology convergence and the availability of different modes to deliver video programming and broadband services;
 - fair treatment for competing providers of services; and
 - the public interest in making a broad range of cable television services available to customers

ALTERNATIVE REGULATION FOR TELEPHONE COMPANIES

- The Legislature extended the sunset for Act No. 73, which provided an alternative ratemaking method for the independent telephone companies.
 - the carrier may not increase its price for basic exchange telecommunications service during the first year following the election to alternative ratemaking treatment; 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;
 - the carrier may not increase its prices for local measured service during the first two years following the election;
 - the carrier may not increase its price for nonbasic telecommunications services by more than nine percent during the first two years following the election;
 - “nonbasic telecommunications services” means any optional telecommunications services other than basic exchange telecommunications services and local measured service that are included in the carrier’s intrastate tariff at the time of the election;
 - the carrier may not increase its intrastate switched access rates for the three years following the end of the year in which the carrier has made the election.

PSB REVIEW OF POLICY ON ELECTRIC UTILITY INVOLVEMENT IN DEPLOYMENT OF TELECOMMUNICATIONS INFRASTRUCTURE

- The PSB must convene a proceeding to examine regulatory policy on the role of electric utilities to facilitate deployment of telecommunications infrastructure and services. The proceeding must commence within 60 days of the effective date of H.248. The DPS must report to the general assembly by January 15, 2008 on its recommendations for any

legislative action needed to implement policies identified as part of that proceeding to meet the state's interest in universal wireless and broadband coverage.

VERIZON VERMONT SALE OF ASSETS

- Verizon/Fairpoint Asset sale/acquisition is important to the legislature and is the subject of a section of H.248. That section provides:
 - “The Speaker of the House, the President Pro Tem 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.”
 - Two letters from the Legislature were or will be filed with the PSB and DPS to express the Legislature's concern about the transaction.

TELECOMMUNICATIONS PUBLIC SAFETY PILOT PROJECT

- H.248 authorizes a pilot program for public safety organizations in the Northeast Kingdom of Vermont, western NH, and the Province of Quebec for the purpose of obtaining next generation wireless and broadband service to facilitate cross-border communications. The project must be done by Department of Information and Innovation (DII) in consultation with the Lt. Governor, public safety organizations, and any economic development district.
- The DII Commissioner must report to certain legislative committees on the status of the project by January 15, 2008, and annually thereafter until the project has ended.

LAND-USE STUDY

- A study land-use committee is created and must examine land-use law and regulatory policy and process aimed at making broadband and mobile telecommunications services available to all Vermonters. The study must also look at the impact of H.248 on land use around the state.
- The committee is made up of:
 - natural resources board representative
 - municipal officer designated by the league of cities and towns
 - regional planning commission representative
 - department of public service staff member
 - a governor-appointed representative from a broadband business and a mobile telecommunications business
- The study committee is entitled to administrative support from the DPS. It must present its recommendations to certain legislative committees no later than January 15, 2008.

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