

1 S.181

2 Introduced by Senator Baruth

3 Referred to Committee on Finance

4 Date: January 3, 2024

5 Subject: Communications; utility poles; attachment charge; Community Media  
6 Public Benefit Fund

7 Statement of purpose of bill as introduced: This bill proposes to establish the  
8 Community Media Public Benefit Fund to support the operational costs of  
9 Vermont's 24 access management organizations. Revenue for the Fund shall  
10 be generated by an annual utility pole attachment charge imposed on  
11 communications service providers.

12 ~~An act relating to the Community Media Public Benefit Fund~~

*An act relating to establishing a television assessment and community  
media*

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

14 ~~Sec. 1. FINDINGS AND INTENT~~

15 ~~(a) The General Assembly finds:~~

16 ~~(1) Public, educational, and government (PEG) access is an essential~~  
17 ~~service for Vermont, providing ongoing access to public meetings and~~  
18 ~~emergency information, connecting communities, and preserving local~~  
19 ~~identity.~~

1 ~~(2) PEG providers, also known as access management organizations~~  
2 ~~(AMOs), provide internet-based services that serve whole communities, not~~  
3 ~~merely those portions covered by cable television systems.~~

4 ~~(3) AMOs have been funded principally by a surcharge on cable~~  
5 ~~television service, which is paid directly from cable companies to AMOs.~~  
6 ~~AMO funding streams have declined in recent years due to technological~~  
7 ~~changes as well as to consumer preference shifts away from cable~~  
8 ~~programming and towards internet-based streaming services.~~

9 ~~(b) It is the intent of the General Assembly to affirm the continuing~~  
10 ~~importance of community media services in Vermont by providing a stable and~~  
11 ~~ongoing funding stream for Vermont's AMOs. Such funding shall be derived~~  
12 ~~from the communications industry through a competitively neutral and~~  
13 ~~nondiscriminatory charge paid by communications providers and imposed on~~  
14 ~~the principal facilities used to support modern communications, which are~~  
15 ~~heavily used by nearly all service providers on the modern network, including~~  
16 ~~wireless service.~~

17 Sec. 2. 30 V.S.A. chapter 88A is added to read:

18 CHAPTER 88A. COMMUNITY MEDIA PUBLIC BENEFIT FUND

19 § 7601. PURPOSE

20 This chapter establishes a financial structure to provide adequate financial  
21 support to Vermont's access management organizations so that public,

1 ~~educational, and government (PEG) services are broadly available everywhere~~  
2 in the State. It creates an annual utility pole attachment charge on  
3 communications service providers to finance that structure.

4 § 7602. DEFINITIONS

5 As used in this chapter:

6 (1) “Access management organization” or “AMO” means a nonprofit  
7 entity that is not a part of a cable company and that is designated to receive  
8 public, educational, and government (PEG) access support through a cable  
9 company and contracted to manage PEG channels and facilities for  
10 noncommercial purposes, pursuant to Public Utility Commission Rule 8.000.

11 (2) “Cable company” means a company that operates a cable television  
12 system, as defined in 30 V.S.A. chapter 13.

13 (3) “Communications facility” means a physical facility, including  
14 copper cable, optical fiber, and antennas, that transmits and receives electrical  
15 or light signals as part of a local, state, national, or international network used  
16 primarily for communications.

17 (4) “Communications service provider” means an entity that directly  
18 controls communications facilities by means of ownership, lease agreement, or  
19 other arrangement. The term includes incumbent local exchange carriers,  
20 competitive local exchange carriers, wireless communications providers, cable  
21 television companies, and internet service providers.

1 (5) "Fund" means the Community Media Public Benefit Fund.

2 (6) "Pole attachment" means the physical attachment of a  
3 communications facility to a utility pole.

4 (7) "Pole-owning utility" means a company, as defined in 30 V.S.A.  
5 § 201(1), that is subject to regulation by the Public Utility Commission and  
6 has an ownership interest in one or more utility poles.

7 (8) "Utility pole" means a structure used to support one or more  
8 communications facilities above ground, without regard to ownership and  
9 without regard to whether the pole is used to transmit electric power. "Utility  
10 pole" does not include a structure outside the public rights-of-way constructed  
11 for the sole or primary purpose of supporting wireless antennas or any building  
12 on which one or more wireless antennas have been deployed.

13 (9) "Vermont Access Network" means the nonprofit organization that  
14 represents Vermont's access management organizations in matters of mutual  
15 concern, including the effective operation and advancement of PEG access  
16 throughout the State, and includes any successor organization.

17 § 7603. COMMUNITY MEDIA PUBLIC BENEFIT FUND

18 The Community Media Public Benefit Fund is created as a special fund  
19 within the State Treasury. The Fund shall be composed of all receipts from the  
20 pole attachment charge imposed in this chapter, as well as any other funds so  
21 appropriated by the General Assembly and any funds received as grants or

1 ~~gifts and approved according to the provisions of 32 V.S.A. § 5. Unexpended~~  
2 balances shall remain in the Fund from year to year.

3 § 7604. POLE ATTACHMENT CHARGE

4 (a) Charge imposed. A charge is imposed on each pole attachment in this  
5 State that exists on April 1 of each year. The charge is imposed on a  
6 communications service provider for each pole attachment owned or  
7 controlled by that communications service provider.

8 (b) Multiple attachments. Where multiple communications facilities exist  
9 on a single utility pole, one charge is imposed for each attachment point.  
10 However, if two or more facilities are attached to a single attachment point,  
11 such as over-lashed cables or wires, those facilities are subject to a single  
12 charge if and only if all facilities at that attachment point are owned or  
13 controlled by a single provider.

14 (c) Rate of charge. The rate of charge shall be \$15.00 per year for each  
15 pole attachment.

16 (d) Exemption. The charge does not apply to pole attachments of publicly  
17 owned communications facilities.

18 (e) Cable deduction. A cable company may deduct from amounts due  
19 under this section any amounts paid to AMOs, as required by Public Utility  
20 Commission Rule 8.000, during the previous calendar year. Nothing in this

1 ~~chapter reduces or eliminates the obligation of any cable company to provide~~  
2 funding to AMOs pursuant to State or federal law or rule.

3 § 7605. DISTRIBUTION OF FUNDS

4 (a) The General Assembly shall annually appropriate amounts from the  
5 Fund to the Office of the Secretary of State for the purpose of making grants  
6 for the operational costs of AMOs pursuant to this section.

7 (b) The Secretary of State shall administer those grants by making a single  
8 disbursement to the Vermont Access Network on or before October 1 of each  
9 year, beginning in 2024. On or before September 1 of each year, the Vermont  
10 Access Network shall submit a plan to the Secretary with a schedule of  
11 proposed subgrants to AMOs. The distribution under this subsection shall  
12 occur only if the Secretary approves that plan.

13 (c) After receiving its annual grant, the Vermont Access Network shall  
14 promptly distribute all of the funds to AMOs pursuant to the plan approved by  
15 the Secretary. An AMO that is not in substantial compliance with the annual  
16 reporting requirements of Public Utility Commission Rule 8.000 is ineligible  
17 for the grant.

18 (d) The General Assembly shall annually appropriate amounts from the  
19 Fund to the Department of Taxes and the Office of the Secretary of State for  
20 administrative expenses incurred under this chapter. The total appropriation to

1 ~~the Department and the Office shall not exceed five percent of the total annual~~  
2 ~~appropriation under this section.~~

3 § 7606. PAYMENT AND REPORTING

4 (a) Beginning on July 1, 2024, and annually thereafter, pole attachment  
5 charges shall be paid to the Department of Taxes, along with a return that  
6 describes the number of pole attachments that the communications service  
7 provider owned or controlled in the State on April 1 of the same calendar year.

8 (b) Within 60 days following any request from the Commissioner of Taxes,  
9 a pole-owning utility shall report the number of utility poles it owns or  
10 controls and submit an inventory of the attachments to those poles, classified  
11 according to the communications service provider who owns or controls the  
12 attached facilities.

13 § 7607. RULEMAKING

14 The Commissioner of Taxes may adopt rules to the extent necessary to  
15 effectuate the purpose of this chapter. No rules or rulemaking process shall in  
16 any way delay the effective date of the pole attachment charge or the annual  
17 payment of such charge.

18 Sec. 3. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

*Sec. 1. 32 V.S.A. chapter 247 is added to read:*

*CHAPTER 247. TELEVISION ASSESSMENT*

*§ 10601. FINDINGS; PURPOSE*

(a) The General Assembly finds:

(1) In recent years, there has been significant growth of high-bandwidth entertainment content delivered over communications networks.

(2) Substantial public investments, both State and federal, have been made to promote communications network deployment and the adoption of essential services delivered over those networks, such as telecommunications and broadband.

(3) Government has long recognized that these networks and services are essential because they provide end users access to critical services, such as educational, governmental, employment, public safety, and health care services.

(b) The purpose of this chapter is to establish a comprehensive statewide mechanism for requiring equitable contributions from cable television companies and television streaming providers to support public benefits and services, including those in the communications sector.

#### § 10602. DEFINITIONS

As used in this chapter:

(1) “Customer” means any person in Vermont who receives or subscribes to a video streaming service provider and does not further distribute such service in the ordinary course of business.

(2) “Gross receipts” means all consideration of any kind or nature received by a video streaming service provider, or an affiliate of such person, in connection with the provision, delivery, or furnishing of video streaming service to customers. “Gross receipts” does not include:

(A) revenue not actually received, regardless of whether it is billed, including bad debts;

(B) revenue received by an affiliate or other person in exchange for supplying goods and services to an affiliated video streaming service provider;

(C) refunds, rebates, or discounts made to customers, advertisers, or other persons;

(D) revenue from telecommunications service as defined in 30 V.S.A. § 7501(b)(8);

(E) revenue from broadband service as defined in 30 V.S.A. § 8082(2);



(F) revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive video streaming service from the video streaming service provider;

(G) reimbursements made by programmers to the streaming service provider for marketing costs incurred by such service provider for the introduction of new programming;

(H) late payment fees collected from customers; or

(I) charges, other than charges for video streaming services, that are aggregated or bundled with video streaming services on a customer's bill, if the video streaming service provider can reasonably and separately identify the charges in its books and records kept in the regular course of business.

(3) "Service provider" means a video streaming service provider.

(4) "Video programming" means programming provided by, or comparable to programming provided by, a television broadcast station, including video programming provided by local networks, national broadcast networks, cable television networks, and all forms of pay-per-view or on-demand video entertainment.

(5) "Video streaming service" means the distribution or broadcasting of video programming displayed by the viewer for a fee on a subscription basis. The term video streaming service, unless expressly provided otherwise, does not include cable service as defined in 47 U.S.C. § 522(6).

(6) "Video streaming service provider" or "television streaming provider" means a person who transmits, broadcasts, or otherwise provides video streaming service to customers and earns more than \$250,000.00 in gross annual revenues from providing such services.

#### § 10603. IMPOSITION AND COLLECTION

(a) There is imposed an assessment on the provision, delivery, or furnishing of video streaming services by a service provider to customers in the State. A service provider shall pay an assessment equal to five percent of the provider's gross receipts derived in or from such services.

(b) Gross receipts pursuant to this section shall be determined by the customer's place of primary use of the service and, if that location cannot be determined with available information or a reasonable inquiry, shall be determined by the customer's billing address.

(c) The assessment created under this section shall be for each year, or part of each year, that a service provider is engaged in the sale of video streaming services to customers.

(1) A service provider subject to the assessment under this section shall:

(A) file, on or before April 15 of each year, a return for the year ended on the preceding December 31; and

(B) pay the tax due, which return shall state the gross receipts for the period covered by each return.

(2) Returns shall be filed with the Commissioner on a form to be furnished by the Commissioner for that purpose and shall contain any other data or information as the Commissioner may require.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the Commissioner may require a service provider to file an annual return, which shall contain any data specified by the Commissioner, regardless of whether the provider is subject to the assessment under this section.

(d) The Commissioner may examine and audit a return required under this section for a period equal to the latter of three years from the date the return was filed or three years from the date the return was required to be filed; however, there shall be no limitation if a return is fraudulent. In addition to the authority granted to the Commissioner under chapter 103 of this title, the Commissioner may require service providers subject to the assessment under this section to keep and preserve records of its business in any form as the Commissioner may require for a period of three years, except that the Commissioner may consent to their destruction within that period or may require that they be kept longer.

#### § 10604. DEPOSIT AND ALLOCATION OF REVENUE

The revenue from the assessment imposed under this chapter shall be deposited in the General Fund. Annually, the General Assembly shall appropriate a portion of the revenue to the Secretary of State to administer and oversee a grant program for the Vermont Access Network to support the operational costs of Vermont's access management organizations so that public, educational, and government programming and services are broadly available throughout the State.

#### Sec. 2. APPROPRIATION

The sum of \$1,100,000.00 is appropriated from the General Fund to the Department of Taxes in fiscal year 2025 for the purpose of implementing the chapter established under Sec. 1. of this act.

*Sec. 3. EFFECTIVE DATES*

*(a) Notwithstanding 1 V.S.A. § 214, this section and Sec. 1 (32 V.S.A. chapter 247) shall take effect retroactively on January 1, 2024 and apply to taxable years on and after January 1, 2024.*

*(b) Sec. 2 (appropriation) shall take effect on July 1, 2024.*