



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: Members, Joint Fiscal Committee
From: Maria Royle, Legislative Counsel
Date: July 24, 2023
Subject: Divestment of Radio Frequency Licenses owned by Instrumentalities of the State – Legislative Approval

Brief Legislative History

This memorandum concerns some of the legal requirements related to the sale or lease of federal radio frequency spectrum owned by instrumentalities of the State, as well as the collection of data pertaining to the potential use of such spectrum licenses.

When the Vermont Telecommunications Authority (VTA) was created in 2007, the General Assembly included a provision of law specifying that “[n]o 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.”¹

At that time, the VTA was directed “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.”²

In 2011, the General Assembly amended the provision of law regarding sales and leases of radio frequency spectrum to require legislative, rather than VTA approval. As specified in statute:

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 General Assembly or, if the General Assembly is not in session, without prior notice to the Chairs of the House Committee on Commerce and Economic Development and the Senate Committees on Finance and on Economic

¹ 30 V.S.A. § 8063(e), as enacted by Act No. 79 (2007), Sec. 1.

² 30 V.S.A. § 8062(a)(8), as enacted by Act No. 79 (2007), Sec. 1.

Development, Housing and General Affairs and approval of the Joint Fiscal Committee, in consultation with the legislative Chairs already referenced in this subsection.³

In 2014, the General Assembly enacted legislation placing the VTA in a period of dormancy commencing in 2015.⁴ In 2015, the General Assembly tasked the newly established Division for Telecommunications and Connectivity within the Department of Public Service with conducting the inventory and assessment of radio frequency licenses held by instrumentalities of the State.⁵

In 2023, the General Assembly repealed all of 30 V.S.A. chapter 91 (pertaining predominantly to the VTA), which includes § 8063(b).⁶ Accordingly, as of June 8, 2023, sales and leases of radio frequency licenses owned by instrumentalities of the State are no longer subject to legislative approval.

Prior VSC Contracts

At issue presently are prior sales and leases of radio licenses by the Vermont State Colleges (VSC). In particular, the sale of two radio licenses (Castleton 2019 and Lyndon 2023), and the 2007 leases of 3 EBS (Education Broadband Spectrum) licenses.

All of these contracts suffered a procedural defect with regard to contract formation in that notice and approval by the General Assembly or the Joint Fiscal Committee, as appropriate, was not obtained as required by 30 V.S.A. § 8063(b).

While the statute does not itself contain any specific legislative approval criteria, the context is clear that the overall purpose is to ensure State communications assets are used in a manner that promotes broadband (or voice or public safety) communications in unserved areas.

Despite not being approved by the General Assembly, the contracts at issue here were presumably otherwise appropriately negotiated and entered into by the contracting parties. Legislative Counsel is not aware of any willful misconduct on the part of the VSC, and the buyers/leases appear to have demonstrated a good faith reliance on the VSC's authority to enter into the contracts.

In light of these circumstances, the JFC has authority to retroactively approve all five contracts and thereby cure the procedural defects. If the JFC decides not to retroactively approve the contracts, the specific terms and conditions of each contract would need to be examined to determine next steps.

³ 30 V.S.A. § 8063(b), as enacted by Act No. 53 (2011), Sec. 18.

⁴ Act No. 190 (2014), Sec. 28.

⁵ Act No. 41 (2015), Sec. 4 (30 V.S.A. § 202e(b)). For a brief period, between 2014-15, the Agency of Administration, Division for Connectivity, was the successor in interest to the VTA and was responsible for conducting the RF inventory and assessment.)

⁶ Act No. 53 (2023), Sec. 138, effective June 8, 2023.