



Department of Public Service
112 State Street, 3rd Floor | Montpelier VT 05620-2601
802-828-2811 phone | 802-828-2342 fax
<https://publicservice.vermont.gov>

SEALED BID

REQUEST FOR PROPOSAL

Equipment Distribution Program Administrator

ISSUE DATE	April 18, 2022
QUESTIONS DUE	April 29, 2022 – 4:30 pm (EST)
RFP RESPONSES DUE BY	May 16, 2022 – 4:30 pm (EST)

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<https://www.vermontbusinessregistry.com>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THIS RFP.

STATE CONTACT:	Aaron Brassard, Telecom Project Manager
TELEPHONE:	(802)-522-2046
E-MAIL:	aaron.brassard@vermont.gov

1. OVERVIEW:

1.1. SCOPE AND BACKGROUND:

This Request for Proposals (RFP) is issued by the Vermont Department of Public Service (DPS). This RFP invites sealed proposals from qualified firms to administer a statewide program that distributes telecommunications equipment to enable low-income deaf, deaf-blind, hard-of-hearing, and physically disabled individuals to communicate by telephone.

1.2. **CONTRACT PERIOD:** Contracts arising from this RFP will be for a period of **2** years with an option to renew for up to two additional twelve-month periods. The State anticipates the start date for such contract(s) will be **July 1st 2022.**

1.3. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.

1.4. **BIDDERS' CONFERENCE:** A bidders' conference will not be held.

1.5. **QUESTION AND ANSWER PERIOD:** Any bidder requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on <https://www.vermontbusinessregistry.com> Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.

1.6. **CHANGES TO THIS RFP:** Any modifications to this RFP will be made in writing by the State through the issuance of an Addendum to this RFP and posted online at <https://www.vermontbusinessregistry.com> Modifications from any other source are not to be considered.

2. DETAILED REQUIREMENTS/DESIRED OUTCOMES:

2.1. The State of Vermont is interested in obtaining bids to meet the following business need(s):

2.1.1. Contractor shall administer a statewide program that distributes telecommunications equipment to enable low-income deaf, deaf-blind, hard-of-hearing, and physically disabled individuals to communicate by telephone. The intended contract term is two years, with an option to renew for an additional two years. See Attachment A for scope-of-work details.

2.1.2. Outreach to users, potential users and the public for the purpose of informing these populations concerning the availability, function, and features and gathering feedback about the quality of the service;

2.1.3. Outreach to captioned telephone users, potential users and the public for the purpose of informing these populations concerning the availability, function, and features of the equipment distribution program.

2.1.4. The performance specifications on the following pages should be considered as basic requirements with no intent to constrain bidder creativity. The goal is to provide a cost-beneficial equipment distribution program that will provide equal access to public telephone service to deaf, hard-of-hearing, and speech-disabled subscribers in Vermont.

3. GENERAL REQUIREMENTS:

3.1. **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.

3.1.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.

- 3.1.2. **Cooperative Agreements.** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.
- 3.1.3. No estimates or contingencies are allowed. All bid prices submitted in response to this RFP must be the bidder's "best and final" offer.
- 3.1.4. **Contractor Performance Bond.** Contractor(s) will be required to furnish a performance bond equal to the total projected annual price of the first year of each contract.
- 3.2. **STATEMENT OF RIGHTS:** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP. The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.
- 3.2.1. **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.
- 3.2.2. **Binding offer: A proposal submitted in response to this RFP shall constitute a binding offer, until approval by the DPS of a finalized contract. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the bidder or an officer of the bidder legally authorized to execute contractual obligations.**
- 3.2.3. **Presentation.** An in-person or webinar presentation/demonstration by the Bidder may be required by the State if it will help the State's evaluation process. The State will factor information presented during presentations into the evaluation. Bidders will be responsible for all costs associated with providing the presentation.
- 3.2.4. **Bidding Costs:** The DPS is not liable for any costs incurred by bidders prior to issuance of a legally executed contract. Further, no proprietary interest of any nature shall occur until a contract is awarded and signed by all concerned parties.
- 3.2.5. **Modification or Withdrawal of Proposals:** Proposals may be modified or withdrawn by the bidder only up to the established due time and date, at which time they will be considered final.
- 3.3. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.
- 3.3.1. Self Reporting: For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.
- 3.3.2. Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list MUST be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

3.4. EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

3.5. METHOD OF AWARD: Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

3.5.1. Evaluation Criteria: Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below.

Scoring Considerations

Price	25%
Experience	25%
FCC and/or State Compliance	25%
Reporting / Billing Package	20%
Creative Solutions	5%
Total:	100%

3.6. CONTRACT NEGOTIATION: Upon completion of the evaluation process, the State may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event State is not successful in negotiating a contract with a selected bidder, the State reserves the option of negotiating with another bidder, or to end the proposal process entirely.

3.7. COST OF PREPARATION: Bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made.

3.8. CONTRACT TERMS: The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. If IT Attachment D is included in this RFP, terms may be modified based upon the solution proposed by the Bidder, subject to approval by the Agency of Digital Services.

3.8.1. Business Registration. To be awarded a contract by the State of Vermont a bidder (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State's office <http://www.sec.state.vt.us/tutor/dobiz/forms/fcregist.htm> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/> .

3.8.2. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

3.8.3. Payment Terms. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

3.8.4. Quality. If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless

specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.

4. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

4.1. The bid should include a Cover Letter and Technical Response and Price Schedule.

4.2. **COVER LETTER:**

4.2.1. Confidentiality. To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

4.2.2. All responses to this RFP will become part of the contract file and will become a matter of public record under the State's Public Records Act, 1 V.S.A. § 315 et seq. (the "Public Records Act"). If your response must include material that you consider to be proprietary and confidential under the Public Records Act, your cover letter must clearly identify each page or section of your response that you consider proprietary and confidential. Your cover letter must also include a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, you must include a redacted copy of your response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances may your entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

4.2.3. Exceptions to Contract Terms and Conditions. If a Bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

4.3. **TECHNICAL RESPONSE.** In response to this RFP, a Bidder shall:

4.3.1. Provide details concerning your form of business organization, company size and resources.

4.3.2. Describe your capabilities and particular experience relevant to the RFP requirements.

4.3.2.1. Identify all current or past State projects.

4.3.3. Identify the names of all subcontractors you intend to use, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as per RFP section 4.3.2 above.

4.4. **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

4.5. **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

4.6. **PRICE SCHEDULE:** Bidders shall submit their pricing information.

4.7. **CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

5. **SUBMISSION INSTRUCTIONS:**

5.1. **CLOSING DATE:** Bids must be received by the State by the due date specified on the front page of this RFP. Late bids will not be considered.

5.1.1. The State may, for cause, issue an addendum to change the date and/or time when bids are due. If a change is made, the State will inform all bidders by posting at the webpage indicated on the front page of this RFP.

5.1.2. There will not be a public bid opening. However, the State will record the name, city and state for any and all bids received by the due date. This information will be posted as promptly as possible following the due date online at: <https://www.vermontbusinessregistry.com>. Bidders are hereby notified to review the information posted after the bid opening deadline to confirm receipt of bid by the State. Any bidder that submitted a bid, and is not listed on the bid tabulation sheet, shall promptly notify the State Contact listed on the front page of this RFP. Should a bidder fail to notify the State Contact listed on the front page of this RFP within two weeks of posting the bid tabulation sheet, the State shall not be required to consider the bid.

5.2. **STATE SECURITY PROCEDURES: Please be advised extra time will be needed when visiting and/or delivering information to State of Vermont offices. All individuals visiting State offices must present a valid government issued photo ID when entering the facility.**

5.2.1. State office buildings may be locked or otherwise closed to the public. **Any delay caused by State Security Procedures will be at the bidder's own risk.**

5.3. **BID DELIVERY INSTRUCTIONS:**

5.3.1. ELECTRONIC: Electronic bids will be accepted.

5.3.1.1. E-MAIL BIDS. Emailed bids will be accepted. Bids will be accepted via email submission to PSD.Telecom@vermont.gov. The subject line must contain "**VT EDP RFP Response**". If bids must consist of more than one email please note "1 of x". Each bid should be single, digitally searchable PDF attachment containing all components of the bid. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.

5.3.1.2. FAX BIDS: Faxed bids will not be accepted.

5.4. U.S. MAIL OR EXPRESS DELIVERY OR HAND DELIVERY:

5.4.1. Electronic bid submissions are preferred. If a bidder would prefer to mail or hand deliver a bid, please call/email the point of contact listed on the first page of this RFP for instructions.

6. **BID SUBMISSION CHECKLIST:**

- ✓ TRANSMITTAL LETTER - The transmittal letter should state that the response to the RFP represents a binding offer for the specific service bidder is bidding on, and that the bidder intends to comply with all requirements of the RFP. Such positive statements notwithstanding, if in the body of the proposal the bidder indicates either lack of response or technical non-compliance with the RFP, the bid may be rejected. The transmittal letter should be signed by the bidder or an officer of the bidder legally authorized to execute contractual obligations.
- ✓ CHECKLIST AND CERTIFICATIONS - The transmittal letter should be followed in the proposal by the checklist and certifications form (Attachment A). Each item in the checklist must be initialed by the person who signed the transmittal letter, indicating that the item has been included in the proposal and accurately represents company information or commitments. Each certification must also be initialed. A bid contact person should be designated on this form.
- ✓ NON-COLLUSION - Certification of four specific forms of non-collusion is required:

1. In certification 1, the bidder warrants that no person or selling agency has been employed or retained to solicit or secure the proposed contract based upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
 2. In certification 2, the bidder warrants that except for proposed subcontracts or a joint proposal, the prices proposed have been arrived at independently without consultation, communication, or agreement with any other bidder or competitor for this procurement.
 3. In certification 3, the bidder warrants that unless otherwise required by law, the prices submitted have not knowingly been disclosed by the bidder directly or indirectly to any other bidder or to any competitor, nor will they be disclosed prior to the award of the contract.
 4. In certification 4, the bidder warrants that no attempt has been or will be made by the bidder to induce any other person or firm to submit or withhold a proposal for the purpose of restricting competition.
- ✓ INDEX - The index shall identify the page number on which each element of the proposal is contained. Items in the checklist must be indexed as a block in the same order as they appeared in the checklist. Any other items to be indexed should appear in the index either before or after the checklist block.
 - ✓ ELEMENTS OF PROPOSAL - Contents should follow same order as presented in this RFP.
 1. General Information
 2. Operational Requirements
 3. Price proposal, with Price Quotation forms found in Attachment D
 - A. Bid prices are fixed for the term of the contract. Estimates will not be accepted. Payments will be based upon contracted services actually performed in accordance with the prices bid in the price proposal.
 - ✓ ATTACHMENTS - The documents that must be included with the proposal as attachments are identified in the checklist.
 - ✓ PROTECTIVE AGREEMENT (optional) Bidders should fill out the Standard Protective Agreement in Attachment B if any information provided in the bid is to be considered proprietary or confidential.

7. ATTACHMENTS:

- 7.1. Certificate of Compliance
- 7.2. Price Schedule
- 7.3. Worker Classification Compliance Requirement; Subcontractor Reporting Form
- 7.4. Standard State Contract with its associated attachments, including but not limited to, Attachment C: Standard State Provisions for Contracts and Grants (December 15, 2017).

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

___ Yes ___ No

D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:
- Energy Star® Certification
 - LEED®, Green Globes®, or Living Buildings ChallengeSM Certification
 - Other internationally recognized building certification:
-

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:
-

3. Please Check all that apply:
- Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
 - Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
 - Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
 - Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? _____
 - Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
 - Bidder offers employees an option for a fossil fuel divestment retirement account.
 - Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:
-
-

4. Please list any additional practices that promote clean energy and take action to address climate change:
-
-
-

F. Acknowledge receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ Telephone: _____

_____ E-Mail: _____

By: _____ Name: _____
Signature of Bidder (or Representative) (Type or Print)

END OF CERTIFICATE OF COMPLIANCE

SUBCONTRACTOR REPORTING FORM

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By	Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
133 State Street, 5th Floor
Montpelier, VT 05633-8000

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, [REDACTED] (hereinafter called "State"), and [REDACTED], with a principal place of business in [REDACTED], (hereinafter called "Contractor"). Contractor's form of business organization is [REDACTED]. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of [REDACTED]. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ [REDACTED].00.

4. **Contract Term.** The period of Contractor's performance shall begin on [REDACTED], 20 [REDACTED] and end on [REDACTED], 20 [REDACTED].

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of [REDACTED] pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D (if applicable)
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

ATTACHMENT A – STATEMENT OF WORK

Specifications of Work to be Performed

Contractor shall administer a statewide program that distributes telecommunications equipment to enable low-income deaf, deaf-blind, hard-of-hearing, and physically disabled individuals to communicate by telephone.

Performance Elements and Measures:

Contractor shall perform and submit regular reports on the following, reports shall be submitted with required information on a monthly, quarterly, and annual basis, with the results as required:

1. Update as needed and disseminate promotional materials and application packages to agencies serving person with disabilities and to individuals with disabilities.
2. Prepare and periodically update an outreach plan and conduct outreach activities at a level sufficient to maximize the use of available funds.
3. Maintain a contact list of known equipment dealers and add dealers to the list upon request.
4. Receive and screen applications, in accordance with the current eligibility screening process as detailed in Public Utility Commission final orders in dockets 6131, 6412, 6766 and 7206.
5. Issue checks to equipment dealers and repair vendors for the purchase and repair of equipment by the program on behalf of eligible applicants, in accordance with the permitted provision of benefits and the list of eligible equipment found in subdivision F of Attachment D.
6. Refer disputes and appeals to the Commissioner of the Department of Aging and Independent Living (DAIL) for resolution.
7. Maintain financial records and financial accountability for the program.
8. Maintain an inventory of distributed equipment and conduct spot equipment audits, as needed, to assess levels of compliance with program guidelines.
9. Maintain statistical and management information to assist in evaluating the program's effectiveness and provide to DPS data necessary for evaluation by DPS of the program and submission of required reports to the legislature.
10. Redistribute used equipment returned to the program, if possible, and collaborate with existing equipment recycling programs.
11. Assist with the meetings of the advisory committee.
12. Provide program services to meet standards set in 30 V.S.A. § 218 a (e).

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: **112 State Street Third Floor • Montpelier, VT • 05620-2601** or emailed to **PSD.Invoice@vermont.gov**

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D – Related Dockets

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6131

Petition of the Vermont Department of Public Service)
for approval of a telecommunications equipment)
grant program and the proposed contract(s) for)
vendors to distribute the equipment)

Order entered: October 8, 1998

PRESENT: David C. Farnsworth, Hearing Officer

APPEARANCES: Sarah Hofmann, Esq.
for the Vermont Department of Public Service

INTRODUCTION

On August 26, 1998, the Vermont Department of Public Service ("DPS" or "Department") filed a petition with the Vermont Public Service Board ("Board") to open a docket for the purpose of approving and establishing by order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone and to review and approve any contract or contracts for vendors to distribute the equipment. Attached to the petition were the *Vermont Telecommunications Equipment Distribution Program - Proposed Program Standards* ("Standards"). Also on August 26, 1998, testimony was submitted to the Board in support of the proposed equipment distribution program by Deena Frankel, Director of Consumer Affairs and Public Information at the Department; Keri Darling, Peer Advocate Counselor for the Vermont Center for Independent Living; and René Pellerin, State Coordinator of Services for the Deaf at the Vermont Department of Aging and Disabilities.

Notice of a prehearing conference was sent to an extensive list of potentially interested parties on September 17, 1998. I convened the prehearing conference on September 25, 1998. The Department's witness, Deena Frankel, and Department counsel, Sarah Hofmann, were the only attendees. I asked a number of questions at the prehearing conference.

Based on the information presented at the prehearing, there are no contested issues of fact or law in this docket. Additionally, the Department stated on the record its intention to waive its right to comment on the Proposal for Decision.

No party in opposition appeared at the prehearing. Therefore, no hearing is necessary, and the Department's prefiled testimony of witnesses Frankel, Darling and Pellerin is admitted into the record.

Based on the above, the Hearing Officer reports the following findings to the Board in accordance with 30 V.S.A. § 8.

FINDINGS OF FACT

1. 30 V.S.A. § 218a(e) requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. 30 V.S.A. § 218a(e).
2. The Department filed a proposed program and supportive testimony for the Vermont Telecommunications Equipment Distribution Program ("VT-EDP") on August 26, 1998. Program Standards ("Standards")-Attachment A of the Petition; *see generally* testimony of Frankel, Darling, and Pellerin.
3. The Department with the assistance of a broad-based advisory committee prepared the proposed VT-EDP for the Board to review. Frankel pf. at 3-4.
4. The proposed VT-EDP is consistent with all mandates and purposes set forth in 30 V.S.A. § 218a. Frankel pf. at 4-12.
5. Prior benefits of participants are justly and reasonably addressed in the proposed Standards. To ensure service to as many potential recipients as possible, a person may receive benefits only once every five years. Standards-Section C; Frankel pf. at 7 and 11.
6. Degree of functional need is justly and reasonably addressed by the proposed Standards. Advocates for the deaf, deaf-blind, hearing impaired and speech impaired populations recommended strongly against pitting one disability against another. For that reason, program guidelines do not give preference for one disability over another, but the proposed Standards do require that to be eligible, an applicant must prove both (a) disability and (b) that adaptive equipment is required in order to use the telephone system effectively. Standards-Section C; Frankel pf. at 11.
7. Income is justly and reasonably addressed in the proposed Standards. Proof of income eligibility can be accomplished in a number of ways and the income range mirrors that dictated by

statute. Standards-Section C; Frankel pf. at 5, 6 and 12.

8. Number of applicants is justly and reasonably addressed by the proposed Standards. Applicants will be served on a first-come, first-served basis until program funds are exhausted for the fiscal year. Those who do not receive benefits will have to reapply in subsequent years. Provisions are made for those applicants who appeal denials and obtain relief. Standards-Section D; Frankel pf. at 12.

9. Disposition of equipment upon change of residence is justly and reasonably addressed by the proposed Standards. Equipment is retained as the property of the State of Vermont and must be returned to the program upon the participant leaving the state, unless the participant has contributed at least ten percent or more of the purchase price. Standards - Section G; Frankel pf. at 12.

10. Two individuals who work closely with the needs of the deaf, deaf-blind, hearing impaired or speech impaired communities support the need for the program as well as the program itself. *See generally* prefiled testimony of Darling and Pellerin.

11. After reviewing the proposals, the Department will file its recommendation and any proposed contract or contracts with the Board as a compliance filing for Board review and approval. 30 V.S.A. § 218a(b); tr. 9/25/98 at 4.

CONCLUSIONS AND RECOMMENDATIONS

30 V.S.A. § 218a requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The statute calls for Board approval of that program and the establishment of the program by rule or order. The statute also sets forth the requirements for this telecommunications grant program as follows:

Pursuant to this program a deaf, deaf-blind, hearing impaired or speech impaired person, whose modified adjusted gross income as defined in section 5829(b)(1) of Title 32 for the preceding taxable year was less than 175 percent of the official poverty line established by the federal Department of Health and Human Service for a family of two published as of October 1 of the preceding taxable year, may be eligible for a benefit of no more than \$400.00 towards the purchase or upgrade of equipment used to access the relay service or otherwise communicate by telephone. The total benefits allocable under this section shall not exceed \$75,000.00 per year. In adopting rules the board shall consider the following:

- (1) prior benefits;

- (2) degree of functional need;
- (3) income;
- (4) number of applicants; and
- (5) disposition of equipment upon change of residence.

The statute further directs the Department to solicit competitive bids from qualified vendors to provide the appropriate telecommunications equipment. The Department is to file with the Board its recommendation as to the vendor or vendors it believes should distribute the equipment. The Board "after notice and hearing may approve the proposed contract, or a modified version thereof, if it is just and reasonable, giving due consideration to costs, quality of service and the interests of the deaf, hearing impaired and speech impaired community." 30 V.S.A. § 218a(c).

After reviewing the evidence, it is clear that the proposed Standards, developed by the Department with the assistance of the advisory committee, are in compliance with the statutory mandates. The criteria for income eligibility mirror the statutory language. The other criteria are addressed in the proposed Standards and supported by the testimony of Ms. Frankel. Additionally, program administration, eligibility criteria, provision of benefits, rights to appeal, eligible equipment, ownership of equipment and the role of an advisory committee are all included in the proposed Standards. For these reasons, I recommend that the Board approve the VT-EDP Program Standards as proposed by the Department, and establish this telecommunications equipment distribution program, as mandated by 30 V.S.A. § 218a(e).

Furthermore, I recommend that the Department submit to the Board, as a compliance filing,¹ to be reviewed by the Board pursuant to 30 V.S.A. § 218a(c), the Department's recommendations and any proposed contract or contracts from qualified vendors to distribute the telecommunications equipment in accordance with these proposed Standards.

The Department has submitted in writing a waiver of the opportunity to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 8th day of October, 1998.

¹After notice and hearing, the Board may approve the submission, pursuant to 30 V.S.A. § 218a (c).

s/ David C. Farnsworth
David C. Farnsworth, Hearing Officer

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The Vermont Telecommunications Equipment Distribution Program ("VT-EDP") is hereby established by this Order. The VT-EDP Program Standards, as proposed by the Department of Public Service, are approved.
3. The Department shall file with the Board on or before January 6, 1999, as a compliance filing for review, the Department's recommendations and any proposed contract or contracts from qualified vendors to distribute the telecommunications equipment in accordance with the VT-EDP Program.

DATED at Montpelier, Vermont, this 8th day of October, 1998.

<u>s/ Richard H. Cowart</u>)	PUBLIC SERVICE
)	
<u>s/ Suzanne D. Rude</u>)	BOARD
)	

) OF VERMONT
s/ David C. Coen)

OFFICE OF THE CLERK

Filed: October 8, 1998

Attest: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6412

Petition of the Department of Public Service)
for approval of proposed amendment to program)
standards and a contract to administer the program)
application process and distribution of benefits)
for the Vermont Telecommunications Equipment)
Distribution Program)

Order entered: 9/29/2000

INTRODUCTION

On August 2, 2000, the Vermont Department of Public Service ("DPS" or "Department") filed a petition with the Vermont Public Service Board (the "Board") to open a docket for the purpose of approving amendments to the Vermont Telecommunications Equipment Distribution Program ("VT-EDP") Program Standards and a contract to administer the program application process and distribution of benefits for the VT-EDP.

Also on August 2, 2000, the testimony of Deena L. Frankel, Director of Consumer Affairs and Public Advocacy for the Department, was submitted to the Board in support of the proposed revisions to the VT-EDP Program Standards and to recommend approval of a new contract with the Vermont Center for Independent Living ("VCIL") to administer the program application process and distribution of benefits. Attached to the testimony of Ms. Frankel were the proposed amended VT-EDP Program Standards (Exhibit DPS-1) and the proposed contract with VCIL (Exhibit DPS-2).

Notice of the prehearing conference was sent to a list of potentially interested parties on August 31, 2000.

I convened a prehearing conference on September 8, 2000. In attendance were Douglas Dapice, a board member of the Equipment Distribution Program, representing Verizon New England, Inc. d/b/a Verizon Vermont ("Verison Vermont"); Deena Frankel, witness for the Department; and counsel Sarah Hoffman, for the Department. Mr. Dapice supported the

Department's petition. No party in opposition appeared at the hearing and no written opposition was submitted to the Board.

Also on September 8, 2000, the Department and Mr. Dapice, in his dual capacity, submitted to the Board a Letter of Agreement ("Letter of Agreement") stipulating to the entry into the record of the prefiled testimony of Ms. Frankel and Exhibit DPS-1 (Proposed Amendments to the Vermont Equipment Distribution Program Standards) and Exhibit DPS-2 (Proposed contract with the Vermont Center for Independent Living). The Letter of Agreement also indicated that the parties waived their right to comment on a proposal for decision.

Based on the above, the Hearing Officer reports the following findings to the Board in accordance with 30 V.S.A. § 8.

FINDINGS OF FACT

1. 30 V.S.A. § 218a(e) requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. 30 V.S.A. § 218a(e). Such a program was created by Board Order on October 8, 1998, in Docket No. 6131.

2. The Department, on August 2, 2000, filed a Petition with the Board requesting approval of amendments to the Program Standards for the VT-EDP. The proposed amendments to the Program Standards were admitted into evidence as per the Letter of Agreement. Letter to Susan M. Hudson from Douglas Dapice and Sarah Hofmann dated September 8, 2000; Exhibit DPS-1.

3. The proposed amendments to the VT-EDP Program Standards were required to bring the Program Standard's into compliance with 30 V.S.A. § 218a following its amendment by the 2000 Vermont General Assembly through Act 67. The legislation: (1) added physical disabilities to the list of impairments qualifying for program participation (provided that those physical disabilities limit the person's ability to use standard telephone equipment), (2) changed the income eligibility criteria to a sliding scale based on family size, and (3) added the cost of repairs to the purposes for which program grants may be used. Frankel pf. at 3-7.

4. The reasons for the proposed amendments to the VT-EDP Program Standards are summarized as follows:

Section A. Scope and authority: The intent of proposed changes in Section A is to conform the section to the amendments to 30 V.S.A. § 218a, which include repair of equipment as a permissible benefit.

Section B. Program administration: This section enumerates the responsibility of the contracted program vendor. Paragraph (2) must be amended to add repair vendors to the list that must be maintained by the contractor. This brings the section into compliance with the amendments made to 30 V.S.A. § 218a.

Section C. Eligibility: Paragraph (1) must be amended to add physical disabilities to the list of impairments that make a person eligible for program participation. As stated in the statutory amendment, the physical disability must limit the ability of the applicant to use standard telephone equipment.

Paragraph (2) requires amendment to conform the income eligibility criteria to the statutory amendment. The new standard is 175 percent of the federal poverty standard for a family of two or the actual number in the household, whichever is greater. The effect of this standard is that households of one and two persons use the standard for a household of two. Households of more than two persons use the actual number in the household. This change was made by the legislature based on input suggesting that relatively low program enrollment was partly the result of the income criteria excluding many needy disabled people by failing to utilize an income scale that recognized the impact of greater household size.

Paragraph (4) restricts reapplication for additional benefits to people who have not received benefits during the four preceding calendar years. The proposed amendment creates an exception for equipment repair to comply with the recent amendments made to 30 V.S.A. § 218a, which provide for equipment repair as a permissible benefit. This change

allows for repair to be covered, thus avoiding or delaying the need for future replacement. The recommended change excludes damages resulting from intentional misuse or abuse.

Section D. Provision of benefits: Paragraph (1) requires amendment to conform the price quotation process to include written estimates of the cost of equipment repair.

The proposed amendment to Paragraph (2) removes a reference to the application deadline that was applicable only to the start-up year of the program, and therefore is now moot.

The proposed amendment to Paragraph (4) conforms the equipment purchase process to include equipment repair.

Section G. Ownership of equipment: Proposed changes to this section make it clear that the return of equipment upon ceasing Vermont residency is limited to equipment purchased by the program, and does not apply when the only benefit provided by the program was to cover the cost of repair for equipment paid for by an applicant.

Frankel pf. at 4-5; Exhibit DPS-1.

5. 30 V.S.A. § 218a(b) calls for the Department to seek competitive bids from qualified vendors who will administer the program application process and distribution of benefits for the VT-EDP. 30 V.S.A. § 218a(b).

6. In the first two fiscal years of the VT-EDP, VCIL received the contract to administer the program. Frankel pf. at 5.

7. As the initial contract came to a close, the Department began the competitive bid process to determine the future contract. On April 25, 2000, the DPS issued the Request for Proposal ("RFP") which is included as part of the contract in Exhibit DPS-2. The RFP was distributed to 28 potential vendors, using the list that was assembled for the 1999-2000 contract cycle, plus any other vendors who requested inclusion since the prior cycle. In addition, notice

of the RFP was posted on the Department of Economic Development's Vermont Business Assistance Network, resulting in two additional requests for the RFP. Frankel pf. at 6.

8. Proposals were due on May 19, 2000. By the close of business on that day, only the proposal from VCIL had been received. No further proposals were received after the deadline. Frankel pf. at 6-7.

9. The DPS requested input from the Vermont Equipment Distribution Program Advisory Council concerning its level of satisfaction with the performance of VCIL. Advisory Council members expressed their support for contract renewal without the need to re-advertise to obtain additional proposals. Frankel pf. at 7.

10. The DPS then requested minor amendments to the VCIL proposal to eliminate the requirement for a performance bond and provide additional detail on the budget. The performance bond was a requirement during the first contract cycle, but was eliminated in the current cycle and replaced by a reimbursement approach rather than up-front payments for benefits issued by the program vendor. Frankel pf. at 7.

11. The completed contract package was submitted to the Attorney General for review, as required of all contracts exceeding \$10,000. The DPS received the approval of the Attorney General on June 30, 2000, for the contract beginning July 1, 2000, and ending June 30, 2002, with the possibility of renewal for an additional two years through June 30, 2004. Frankel pf. at 7.

12. In the first two years of VT-EDP operations, VCIL effectively implemented its requirements under the initial contract. They successfully established the program outreach materials and application process, publicized the program, and administered its benefits, as well as carrying out reporting and financial management obligations under the contract. Although they were the only applicant for the new contract cycle, they amply demonstrated their ability to carry out the program requirements. In addition, their current proposal effectively minimizes program administrative costs, maximizes benefits to eligible applicants, and takes advantage of synergies with other programs administered by VCIL and targeted to the same population as the equipment distribution program. For these reasons, the selection of VCIL for a second contract term meets the statutory criterion of being "just and reasonable, giving due consideration to costs, quality of

service and the interests of the deaf, hearing impaired and speech impaired community." 30 V.S.A. § 218a(c); Frankel pf. at 5-6.

CONCLUSIONS AND RECOMMENDATIONS

30 V.S.A. § 218a requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The statute calls for Board approval of that program and the establishment of the program by rule or order. The program standards were approved in the Board's Order of October 8, 1998, in Docket No. 6131, Petition of the Vermont Department of Public Service for approval of a telecommunication equipment grant program and the proposed contract(s) for vendors to distribute the equipment. In the course of the 2000 General Assembly, the Legislature, through Act 67, made changes to 30 V.S.A. § 218a. The legislation: (1) added physical disabilities to the list of impairments qualifying for program participation (provided that those physical disabilities limit the person's ability to use standard telephone equipment); (2) changed the income eligibility criteria to a sliding scale based on family size; and (3) added the cost of repairs to the purposes for which program grants may be used.

The statute further directs the Department to solicit competitive bids from qualified vendors to provide the telecommunications equipment. The Department is to file its recommendation as to the vendor or vendors it believes should distribute the equipment to the Board. 30 V.S.A. § 218a(b). The Board "after notice and opportunity for hearing may approve the proposed contract, or a modified version thereof, if it is just and reasonable, giving due consideration to costs, quality of service and the interests of the deaf, hearing impaired and speech impaired community." 30 V.S.A. § 218a(c).

After reviewing the evidence, it is clear that the Amended VT-EDP Program Standards (Exhibit DPS- 1), are necessary to bring the VT-EDP Program Standards into compliance with the new statutory mandates. The proposed amendments to the Program Standards fulfill all the requirements of the revised statute. For this reason, I recommend that the Board approve the amended VT-EDP Program Standards, as proposed by the Department.

Furthermore, I recommend that the proposed contract with VCIL (Exhibit DPS-2) to administer VT-EDP and distribute the benefits therein from July 1, 2000, through June 30, 2002, with an option for a two-year extension, be approved.¹ VCIL was the only bidder under the contract. However, VCIL has a proven track record for the administration and equipment distribution of the VT-EDP. In VCIL's first two years as the chosen vendor, the organization demonstrated its ability to carry out the program requirements. Additionally, VCIL's current proposal effectively minimizes program administrative costs, maximizes benefits to eligible applicants, and takes advantage of synergies with other programs administered by VCIL for the same population as VT-EDP. The VT-EDP Advisory Counsel expressed support for the VCIL contract renewal. For the foregoing reasons, the contract meets the statutory criterion of being "just and reasonable, giving due consideration to costs, quality of service, and the interests of the deaf, hearing impaired and speech impaired community."

Finally, the Department and Verizon Vermont agree to waive their rights to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811. Tr. 09/08/00 at 4; Letter of the Department, September 8, 2000.

DATED at Montpelier, Vermont this 20th day of September, 2000.

s/David Farnsworth
David C. Farnsworth, Hearing Officer

1. Under § 5 of the proposed contract, the Department retains an option to approve the extension of the contract for two years beyond June 30, 2002. This option is appropriate under 30 V.S.A. § 218a(b) which provides that the "term of any contract shall not exceed four years." If, upon receiving notice from the contractor, i.e., VCIL, of its interest in extending the contract for an additional two-year term, the Department intends to renew the contract pursuant to this section, I recommend that it notify the Board of its intent and of its eventual decision.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The Vermont Telecommunications Equipment Distribution Program ("VT-EDP") Program Standards are hereby amended as petitioned for by the Department of Public Service.
3. The proposed contract (Exhibit DPS-2) with VCIL starting on July 1, 2000, and ending on June 30, 2002, is approved.
4. The Department of Public Service shall provide the Board with notice of its intent to renew this contract with VCIL and of its eventual decision within thirty (30) days of those decisions.

DATED at Montpelier, Vermont, this 29th day of September, 2000.

s/Michael H. Dworkin)	PUBLIC SERVICE BOARD OF VERMONT
)	
)	
s/David C. Coen)	
)	
)	

OFFICE OF THE CLERK

Filed: September 29, 2000

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6766

Petition of the Vermont Department of Public)
Service for approval of amendments to the)
Vermont Telecommunications Equipment)
Distribution Program)

Order Entered: 10/11/2002

I. INTRODUCTION AND OVERVIEW

In accordance with 30 V.S.A. § 218a, the Public Service Board ("Board") must establish by rule or order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. In an Order dated October 8, 1998, in Docket 6131, the Board established the Vermont Telecommunications Equipment Distribution Program ("VT-EDP") and approved the Program Standards as proposed by the Vermont Department of Public Service ("Department"). The 2002 session of the Vermont General Assembly amended 30 V.S.A. § 218a in Act 93. Accordingly, changes to the Program Standards are required to conform the Program Standards to the newly enacted law. On September 4, 2002, the DPS filed a petition asking the Board to approve proposed amendments to the VT-EDP Program Standards. With that petition was the supporting prefiled testimony and exhibits of Deena Frankel, Director for Consumer Affairs & Public Information, of the Department, and an amended version of the VT-EDP Program Standards.

No one has asked for intervention in this docket. Ms. Frankel's testimony has not been contested by anyone. Accordingly, her testimony is admitted into evidence as if given orally.

We find that the amendment proposed by the Department to the VT-EDP Program Standards are in accordance with the statutory provisions governing this program, and should be adopted.

II. FINDINGS OF FACT

1. 30 V.S.A. § 218a(e) requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The Board is to establish the program by rule or order. 30 V.S.A. § 218a(e).

2. By Order dated October 18, 1998, in Docket 6131, the Board established the VT-EDP and approved the Program Standards as proposed by the Department.

3. Act 67 of the 2000 session of the Vermont General Assembly amended 30 V.S.A. § 218a in ways that required amendments to the Program Standards approved by the Board in Docket 6131. Amendments conforming the VT-EDP Program Standards to the statutory amendment were proposed by the Department, and approved by the Board in Docket 6412.

4. The 2002 Vermont General Assembly further amended 30 V.S.A. § 218a through the provisions of Act 93. Accordingly, changes are now needed in the VT-EDP Program Standards to conform them to Act 93.

5. Act 93 of the 2002 General Assembly made four changes to 30 V.S.A. § 218a:

- (1) It increased the income threshold for program eligibility from 175 percent of the federal poverty standard to 200 percent of the federal poverty standard.
- (2) It changed the assumed family size for purposes of determining which income limit applies to an applicant from two to six.
- (3) It removed the cap on the maximum per-person benefit, which had been set at \$400.
- (4) It required the Board to consider in adopting program guidelines "appropriate limits on per-person benefit levels based on the equipment needed and the income level of the applicant."

Act 93 of the 2002 General Assembly. Frankel pf. at 5.

6. The recommended changes to the VT-EDP standards were developed by the Department in consultation with the equipment program advisory committee. The advisory committee, which is required by the existing program guidelines, consists of: a representative of the Department of Aging and Disabilities, René Pellerin; a representative of Verizon New

England Inc., d/b/a Verizon Vermont, Douglas Dapice; a representative of the Vermont Assistive Technology Project, Julie Tucker; and a representative of the Council of Vermont Elders, Sally Schober (who holds the seat reserved for a representative of hard-of-hearing consumers). In addition, the Vermont Center for Independent Living ("VCIL"), which has the contract to administer the program, staffs the advisory committee and provides input on the needs of persons with disabilities and on program administration. VCIL representatives who work with the committee include: Michelle Abare, Deaf Peer Advocacy Counselor; Laura Callahan, Equipment Program Manager; Janet Dermody, Program Director; and Karin Nissen, Equipment Program Specialist. In addition to the committee's input, the Department also worked with the Department of Aging and Disabilities ("DAD") to obtain agreement on the waiver processes which are an important component of the guidelines. No member of the advisory committee objected to the final draft proposal from the Department. Frankel pf. at 4–5.

7. Taken section by section, the Program Standards are being amended as follows:

Section A, Scope and Authority: The proposed changes in Section A are to conform the section to the amendments to 30 V.S.A. § 218a, by removing the reference to the now-deleted cap on benefits, and by recognizing that part of the income guidelines are now established in the guidelines, rather than the law, based on latitude provided by the statute.

Section C, Eligibility: The change in Paragraph (1) clarifies that "audiologist" has the meaning established in the relevant professional regulation statute, 26 V.S.A. § 3281(1), which defines audiologist as "any person who has at least an M.A. or M.S. degree in audiology, at least 300 hours of supervised practical training, and is eligible for the American Speech-Language-Hearing Association Certificate of Clinical Competence in audiology, and provides services to the public under any title incorporating the terms audiology, audiologist, audiological, hearing clinic, hearing clinician, hearing or aural rehabilitation, or

hearing specialist." This change is not the result of Act 93, but rather is intended to clarify who can provide certification of disability required by the equipment distribution program. This clarifies an issue that has arisen in program administration.

Paragraph (2) implements an amendment to conform the income eligibility criteria to the statutory amendment. The new standard is 200 percent of the federal poverty standard, increased by Act 93 from 175 percent. Act 93 also permitted an increase in the presumed family size for purposes of determining which income limit applies to an applicant. The law previously set the presumed minimum family size at two, meaning a household of either one or two persons was presumed to have two persons for purposes of determining the maximum household income below which a person was eligible for benefits.

Although Act 93 permitted the minimum presumed size to increase to six persons, the recommended revisions do not adopt the complete latitude available under the statute in the normal course of the program. The revision retains the current presumed household size of two, meaning that an individual applicant can continue to use the income thresholds for a family of two. Beyond two people, the income eligibility guidelines use a sliding scale based on actual family size. Under this amendment, eligibility for a person in a household of three members is 200 percent of the federal poverty standard for a family of three, eligibility for a person in a household of four members is 200 percent of the federal poverty level for a family of four, and so forth.

Paragraph (2)(c) conforms the percent of poverty threshold to Act 93 by increasing the multiplier from 175 percent of poverty to 200 percent of poverty.

Paragraph (4) is expanded to include a new provision regarding reapplication. This provision is not a result of changes made by Act 93, but is responsive to experiences with program administration. The existing guidelines restrict anyone in the household from applying for program benefits if any person in the household has received benefits within the previous four years. The recommended guideline revisions create an exception to the four-year waiting period if a person in the same household as the recipient is eligible for benefits and requires completely different adaptive equipment than that which has already been provided by the program as a result of a different disability. The waiting period is not a statutory requirement. It was originally recommended to prevent households from acquiring through program funds duplicate pieces of equipment which served the same purpose. The proposed revision is therefore permitted by law and remains consistent with the original purpose of the waiting period while enabling the program to address unmet needs.

Paragraph (6) is an addition to the guidelines to accommodate those people whose income is too high for eligibility under the provisions of Paragraph (2), but is below the maximum level established by Act 93. This group consists of people in households from one to five persons whose income is above the sliding scale and below \$48,520, the threshold amount for a family of six. The proposed Paragraph (6) establishes a waiting list for these individuals. If funds are available at the end of the fiscal year, these individuals' applications may be funded on a first-come, first-served basis. The authority to establish the proposed mechanism for serving upper income applicants is included in the language of Act 93 which requires the Board to consider the "appropriate limits

on per-person benefit levels based . . . the income level of the applicant." The recommended mechanism is simple to administer and assures priority to lower income applicants.

Section D, Provision of Benefits: Paragraph (1) includes an amendment to correct a typographical error by striking the redundant word "already."

The revision of Paragraph (3) conforms the language of this section to the addition of waiver provisions which will be detailed in Section E below.

The revision of Paragraph (4) implements the change made by Act 93 which removed the \$400 cap on per-person benefits. The revision will reset the cap at \$750 per person. This amount was based on a market survey of prices of popular TTYs with features that are most needed by applicants. This survey showed that the vast majority of needs of the target group can be met within a \$750 cap. Since applicants can only apply for the equipment they need to connect to the telephone network, there is little danger the increase in the cap will result in participants "gold-plating" their requests. In fact, many program applications already fall well below the existing \$400 cap because the applicants need such items as amplified phones which cost less than \$400. By changing the cap to \$750, the program can accommodate most applicants' needs without needing to establish a complex schedule of maximums based on disability or equipment need. The authority for the Board to set the cap at \$750 and to establish a waiver process for those with needs for more costly equipment derives from the language in Act 93 which requires the Board to set "appropriate limits on per-person benefit levels based on the equipment needed . . ."

The revisions include modifications to Paragraph (5) to establish a ten-percent hold back of benefit funds (as distinct from administrative funds) to cover appeals and waivers. Fifteen days from the end of the fiscal year, if these funds have not been expended to cover any successful appeals, the funds would be expended to meet the needs of people on the program waiting list in accordance with Section C, Paragraph (6). In addition, the changes to this section shift the application dates for the program from a calendar year to a fiscal year-basis to be consistent with the way in which the program is contracted to an outside vendor.

Section E, Rights to Waiver and Appeal. The revisions to this section add waivers to the already existing appeal procedures and clarify ambiguous language that was previously approved. The new waiver provisions, like the already-existing appeals, go to the Commissioner of the Department of Aging and Disabilities for his or her review and determination.

Paragraph (1)(a) retains the appeal procedure and criteria already included in the existing guidelines, but reorganizes the presentation to conform to the revision of the section. The section has also been amended to clarify that the Commissioner of Aging and Disabilities may grant the relief requested in the appeal, as opposed to the former language that referred to granting the appeal. All appeals must be heard. The new language clarifies the intent that it is up to the Commissioner to decide the merit of the appeal.

Paragraph (1)(b) adds a provision to enable the Commissioner to waive the four-year waiting period for a previous benefit recipient to reapply. The criteria for granting a waiver are based on certain risks to the applicant in the absence of program benefits and/or certain changes in the applicant's circumstances.

Paragraph (1)(c) permits the Commissioner to waive the \$750 cap on the per-person benefit if the applicant requires equipment which exceeds the cap in order to connect to the publicly switched network.

Paragraph 2 establishes that waivers and appeals are funded first from any available regular program funds, and then, if those funds are exhausted, from the ten percent hold back established in Section D.

Frankel pf. at 5–11.

III. DISCUSSION

30 V.S.A. § 218a(e) mandates that the Department propose and the Board establish by rule or order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The Board originally established the VT-EDP and the Program Standards in Docket 6131, Order entered 10/8/98. The 2000 General Assembly amended the statute, and amendments to the Program Standards had to be made. Docket 6412, Order entered September 9, 2000.

Now the 2002 General Assembly, through Act 93, has further amended the statute, requiring conforming amendments to the Program Standards. The Department's proposed changes to the Program Standards have addressed these legislative changes, and also, in a few instances, amended the Program Standards for clarification purposes and to account for the experiences of the VT-EDP to date. The analysis for each proposed amendment to the VT-EDP Program Standards has been documented in the testimony of Ms. Frankel, Director for Consumer Affairs & Public Information for the Department, which we accept.

These amendments were reviewed by not only Department staff, but also by many people who are knowledgeable about the VT-EDP as a program and its constituents. The consultation included the equipment program advisory committee, which apparently includes representatives of all persons interested in this topic. No member of the advisory committee objected to the final draft proposal from the Department. This, and our desire to see the new guidelines in place as soon as possible, gives us confidence to rely on the uncontested DPS testimony and

accompanying exhibits without noticing this matter for further hearing.¹

We conclude that the amendments as presented by the Department are necessary, reasonable, and equitable. The Board has taken into account the following factors in evaluating the amendments:

- (1) prior benefits;
- (2) degree of functional need;
- (3) income;
- (4) number of applicants;
- (5) disposition of equipment upon change of residence;
- (6) appropriate limits on per-person benefit levels based on the equipment needed and the income level of the applicant.

The amendments bring the VT-EDP Program Standards into compliance with the recent statutory changes made by the General Assembly. In addition, the manner in which the amendments have been incorporated into the Program Standards have allowed for simplicity of administration. The annual funding cap of \$75,000 means that, in order to maximize the amount of benefits to eligible applicants, administrative costs must be controlled strictly. The amendments also take into consideration prior benefits received, degrees of need, income of applicants, the number of applicants, and the appropriate limits on per person benefit levels based on equipment needed and the income level of the applicant.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Vermont Public Service Board that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The proposed amendments to the Vermont Telecommunications Equipment Distribution Program Standard are approved as presented by the Vermont Department of Public Service. A redlined copy of the Program Standards with the amendments incorporated therein is attached to this Order.

1. If any person or group has been overlooked and has an objection to these changes, we can consider their views in subsequent proceedings.

DATED at Montpelier, Vermont, this 11th day of October, 2002.

s/Michael H. Dworkin)
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s/David C. Coen)
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s/John D. Burke)

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: October 11, 2002

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7206

Petition for Approval of 2006 Amendments to the)
Vermont Telecommunications Equipment)
Distribution Program)

Order Entered: 8/30/2006

I. INTRODUCTION AND OVERVIEW

In accordance with 30 V.S.A. § 218a(e), the Public Service Board ("Board") must establish by rule or order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone.

In Docket No. 6131, the Board established the Vermont Telecommunications Equipment Distribution Program ("VTEDP") and approved the Program Standards as proposed by the Vermont Department of Public Service ("Department").¹ Further changes to the Program Standards were made in Docket No. 6412² and Docket No. 6766.³

On June 9, 2006, the Department of Public Service ("DPS") filed a petition asking the Board to approve proposed amendments to the VTEDP Program Standards. With that petition was the supporting prefiled testimony and exhibits of Susan Paruch, Consumer Affairs and Information Specialist for the Department, and proposed revisions to the VTEDP Program Standards.

Ms. Paruch's testimony has not been contested by anyone. Accordingly, her testimony is admitted into evidence as if given orally. Based upon that testimony and the findings below, the DPS has already consulted the relevant user community, and there is no need for additional

¹ Order of October 8, 1998.

² Order of September 29, 2000.

³ Order of October 11, 2002.

public notice or a public hearing. Therefore the matter is ready for decision.

We find that the amendments proposed by the Department to the VTEDP Program Standards are in accordance with the statutory provisions governing this program, and should be adopted.

II. FINDINGS OF FACT

1. Costs of the VTEDP program are funded through the Vermont Universal Service Fund (VUSF) established under 30 V.S.A. 218(c). Title 30 V.S.A. §218a(e) provides that benefits of the program shall not exceed \$75,000.00 per year. The funding level was established when the program was first enacted in 1998, and has not changed since that time. Paruch pf. at 4.

2. The DPS amendments are intended to address practical problems in program administration and thereby make the program function more smoothly and efficiently. Except for the adjustments to conform to new statutory language in 2000 and 2002, this is the first such administrative adjustment since the program's founding in 1998. Paruch pf. at 4.

3. The Department of Public Service developed the changes in consultation with the EDP Advisory Committee established under the existing guidelines. The committee consists of: a representative of the Department of Aging and Independent Living⁴; a representative of Verizon; a representative of hard-of-hearing consumers; a deaf consumer; a representative of the Council of Vermont Elders; and the DPS Director of Consumer Affairs. As administrator for the program's vendor contract, the Vermont Center for the Deaf and Hard of Hearing (VCDHH) also provides input on the needs of persons with disabilities and on program administration. The proposed changes in the program guidelines were developed through a dialogue with VCDHH staff who administer the program, the EDP Advisory Council and the DPS. Ultimately, all agreed on the draft that is being submitted herewith. Paruch pf. at 5.

4. The material changes to the Program Standards are as follows:

a. The name of departments within the Human Services Agency have been

⁴ The guidelines currently refer to the Department of Aging and Disabilities. The name of the agency has changed to the Department of Aging and Independent.

updated to reflect reorganization of that agency. Paruch pf. at 5, 7.

b. Section C, paragraph (1) allows community mental health agencies to certify an applicant's disability and need for equipment. The revisions eliminate reference to "standard telephone equipment." As revised, the rules allow any disabled person to receive assistance if they require "an adaptive telecommunications device in order to be able to use the publicly switched telephone network." Paruch pf. at 6.

c. Incorrect statutory cross-references are corrected in Section C, paragraphs (2) and (6). Section C, paragraph (2)(a) updates the income tax forms that may be used to claim eligibility. Paruch pf. at 6-7.

d. Section C, paragraph (3) eliminates a statutory cross-reference used to define Vermont residency. The section referred to in the current guidelines, 32 V.S.A § 5811(11)(A), would allow a person to receive program benefits who resides in Vermont for 183 days per calendar year. Therefore, a person who has legal residency in another state could qualify for the program. The change is to require that the beneficiary be a "legal resident" of Vermont. This is intended to limit program eligibility to persons who have a full-time permanent residence in Vermont. The new language was selected after consulting with other state agencies. Paruch pf. at 7.

e. Section C, paragraph (5), adds new language allowing denial of applications that remain incomplete for 90 days or more. This will allow staff to close out applications where the applicant has not responded to requests to provide a complete application. Staff would retain the discretion to keep an application open, but they could close any stale cases where the applicant has been unresponsive. Paruch pf. at 7-8.

f. Section D, paragraph (2) eliminates language establishing February 1 as the first date for application in any calendar year. The program operates on a July to June fiscal year basis, and there is no reason to prevent applications from being submitted during January. Paruch pf. at 8.

g. Section D, paragraph (3) is amended to clarify that applications will be processed in the order in which completed applications are received. This removes an existing ambiguity regarding incomplete applications. Paruch pf. at 8.

h. A new provision in section D, paragraph (4) limits applicants to one adaptive system at a time. Under the new language, for example, a person could not receive a "TTY" and a "CapTel" phone through the same application since either of these pieces of equipment can connect a user to the publicly switched network. The new language allows for waivers in the case of necessity, and it clarifies that a "ring signaler" is not subject to the same limitation. Paruch pf. at 8.

i. Section D, paragraph (5) allows the program administrator at the end of a fiscal year to retain unfunded but otherwise eligible applications for future funding. This will reduce the burden on many applicants whose application is still valid when new fiscal year funds become available to the program. Nevertheless, when income information has become outdated, applicants will need to reapply and the program administrator will notify applicants of that fact. Paruch pf. at 9.

III. CONCLUSIONS

Based on the preceding findings, we conclude that the amendments as presented by the Department are necessary, reasonable, and equitable. As required by 30 V.S.A. § 218a(e), the Board has taken into account the following factors in evaluating the amendments:

- (1) prior benefits;
- (2) degree of functional need;
- (3) income;
- (4) number of applicants;
- (5) disposition of equipment upon change of residence;
- (6) appropriate limits on per-person benefit levels based on the equipment needed and the income level of the applicant.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Vermont Public Service Board that the proposed amendments to the Vermont Telecommunications Equipment Distribution Program Standard are approved as presented by the Vermont Department of Public Service. A

copy of the Program Standards with the amendments incorporated therein is attached to this Order.

DATED at Montpelier, Vermont, this 30th day of August, 2006.

<u>s/ James Volz</u>)	
)	
)	
<u>s/ David C. Coen</u>)	
)	
)	
<u>s/ John D. Burke</u>)	

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: August 30, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.