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State of Vermont

Public Service Board

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September 30, 2008

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW – A306
Washington, DC 20554

Karen Majcher
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RE: Certification of Support for Rural and Non-Rural High–Cost Carriers Pursuant to 47 C.F.R Sections 54.313-314, CC **Docket Nos. 96-45 and 00-256**

Rate Comparability Review Pursuant to 47 C.F.R. Section 54.316

Dear Secretary Dortch and Administrator Majcher:

In accordance with the Federal Communication Commission's rules, the Vermont Public Service Board (the "Board") submits its annual Federal Universal Service Fund certification and Rate Comparability review.

I. Federal Universal Service Fund Certification

In accordance with 47 CFR §§ 54.313 and 54.314, I certify that all federal high-cost funds flowing to the following eleven companies operating in Vermont will be used in 2008 in a manner consistent with 47 U.S.C. § 254(e) for the provision, maintenance, and upgrading of facilities and services for which support is intended.

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List A B C D E

VERMONT

In Vermont, there are three types of telecommunication carriers:

Nonrural

1. Telephone Operating Company of Vermont LLC d/b/a/ FairPoint Communications ("FairPoint") (SAC 145115).[1]

Rural

2. Franklin Telephone Company (SAC 140053).
3. Ludlow Telephone Company (SAC 140058).
4. Northfield Telephone Company (SAC 140061).
5. Perkinsville Telephone Company (SAC 140062).
6. Shoreham Telephone Company, Inc. (SAC 140064).
7. Topsham Telephone Company, Inc. (SAC 140068).
8. Waitsfield-Fayston Telephone Co., Inc., d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom (SAC 140069).
9. FairPoint Vermont, Inc., d/b/a Northland Telephone Company of Vermont, d/b/a Fairpoint New England (SAC 143331).
10. Vermont Telephone Company, Inc., d/b/a VTel (SAC 147332).

Competitive

11. RCC Atlantic, Inc., d/b/a Unicel (SAC 149001).[2]

FairPoint is the only nonrural incumbent eligible telecommunications carrier in Vermont. Federal support to FairPoint will be used in two ways:

1. The sum of $1,345,940 per year (equal to support received in 1999) has been incorporated into the calculation of the company's overall rates. This base amount will continue to support lower rates for basic service in the coming year.

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[1] On February 15, 2008, the Board approved a joint petition by Verizon-Vermont and FairPoint to sell substantially all of Verizon-Vermont's landline assets to FairPoint. *See* Docket 7270, *Joint Petition of Verizon New England, Inc. d/b/a Verizno-Vermont, certain affiliates thereof, and FairPoint Communications, Inc., for approval of an asset transfer, acquisition of control by merger and associated transactions*, Order of 2/15/08. Consequently, FairPoint now stands in the shoes of Verizon-Vermont for all practical and legal purposes relevant to the process of certifying support for rural and non-rural high-cost carriers pursuant to 47 C.F.R. Sections 54.313-314 and the rate comparability review pursuant to 47 C.F.R. sectino 54.316.

[2] Rural Cellular Corporation ("RCC") is presently being acquired by Cellco Partnership d/b/a Verizon Wireless. As a condition of approval of this transaction, Verizon Wireless is required to transfer day-to-day control over certain assets and spectrum holdings in Vermont to a Management Trustee pending divestiture of those assets to AT&T, Inc. Because this aspect of the execution of the transaction is still in progress, the representations in this certification letter are based on the facts pertaining to RCC Atlantic, Inc (a subsidiary of RCC)as they exist prior to the divestiture to AT&T. The Board will update the certification once the divestiture is completed, should the divestiture materially change the information pertaining to the assets and operations of RCC Atlantic, Inc. in Vermont.

2. The remaining federal support will be distributed through an explicit credit for residential and business customers. Pursuant to a 1999 agreement reached between Verizon-Vermont (now FairPoint)[3] and the Vermont Department of Public Service, each FairPoint residential and business customer will receive a monthly bill-credit titled "Federal Universal Service High Cost Fund Credit." The credit amounts will be set to fully distribute the expected additional federal support to be received by FairPoint in the coming year. As the end of the year approaches, if the projected support amount does not equal the initial estimate, a final adjustment will be made to the credit amounts. Currently the residential monthly credit is $2.37 per line and the business credit is $5.78 per line.

All federal support given to the remaining carriers (#2 through #11) will be available as revenue to the receiving companies. The Board requires all of these companies to periodically file information pertaining to their receipt of federal support, as well as other information that indicates how the federal funds are used.

II. Rate Comparability

47 C.F.R. Section 54.316 requires the Board to annually review residential rates in rural areas of the state served by FairPoint, and to certify to the Federal Communications Commission whether such rates are reasonably comparable to urban rates nationwide. For the rate comparability certification, the Board is allowed to presume that the residential rates in "rural areas" served by FairPoint are reasonably comparable to the nationwide benchmark urban rate, if such Vermont rural rates are below $34.58 per month.

The Board conducted the required review in 2005. The Board collected rate data for "rural areas of the state" served then by Verizon-Vermont, the only nonrural carrier in Vermont. The Remand Order defined "rural area" as "any non-metropolitan county or county- equivalent, as identified by the Office of Management and Budget." Para. 83. This definition remains irrelevant because FairPoint – like its predecessor Verizon-Vermont – charges the same rates in all parts of Vermont. Therefore, rate data collected for the state as a whole are exactly equal to the rates in our "rural areas" as defined in the rule.

The FCC rule does not explain in detail how rates are to be measured. This is an essential question because FairPoint imposes Local Measured Service (LMS) charges. In February of

[3] FairPoint was ordered to substitute itself for Verizon-Vermont in all proceedings before the Board except in one instance that is not relevant to the subject matter of the certification that is the subject of this letter. See Docket 7270, Order of 2/15/08 at 41.

2004, the Vermont Public Service Board filed comments in response to a Further Notice of Proposed Rulemaking (FCC No. 03-249). Those comments stated that:

> If the Commission goes forward with its new concept of rates-based support, rate data must be valid and reliable. This requires the Commission to collect additional data, beyond nominal rates, that affect the burden of paying for local exchange service as well as the value of that service. Oversimplified rate information can underestimate the real burden on consumers and can create perverse incentives for states and carriers. If the Commission does not solve the methodological problems described below, nationwide rate data would be at best highly random and at worst misleading and arbitrary. . . . to develop valid and reliable local rate data it should make five adjustments: usage-sensitive charges; local calling area size; customer option plans; local/toll balance; and business/residential balance. Vermont PSB Comments of 1/14/04 at 3-4.

The Board's comments showed that an adjustment for usage-sensitive charges is important because the Commission's standard measurement technique, which is based upon 500 minutes of local calling, may underestimate actual usage. However, the Commission has not taken any further action on that Further Notice of Proposed Rulemaking. Therefore the Board must determine how best to evaluate local measured service charges for the purposes of determining nationwide rate comparability.

The Board found that measuring local rates was a very difficult task requiring substantial judgment. First, the Board collected data from Verizon-Vermont concerning the rates paid by residential customers who did not subscribe to fixed calling plans. The Board noted that customer payments for local service varied from $20.74 per month for customers who were not on Lifeline but who had minimum usage, to $47.89 per month for customers who had the maximum recognized minutes of usage. The Board found, however, that the Verizon-Vermont data was not a sufficient basis to reach a conclusion on comparability.

The Verizon-Vermont data excludes customers who opted to take calling packages such as the "Freedom Package." At the time of the Board's inquiry in 2005, this package sold for $49.95 per month, and it included unlimited local calling, intra-state toll and inter-state toll calling. According to Verizon-Vermont at the time, 31 percent of the primary residential lines served by Verizon-Vermont subscribed to either the Freedom Package or one of several other calling packages. For these customers, Verizon did not record local usage minutes, and it was not possible to allocate a portion of the monthly calling package bill to local services. In sum, almost one-third of residential customers had opted out of rate designs that would have allowed measurement of local rates.

Moreover, the customers who purchased packages such as the "Freedom Package" could not be assumed to be typical of the residential customer base. Because Verizon-Vermont's other customers paid a sizeable per-minute local measured service rate, those customers with high local usage had an incentive to switch to such fixed-price plans. Therefore, the Board could not exclude these customers from its analysis because that would have biased the sample and would have produced an invalid estimate of local rates.

Second, the Verizon-Vermont data included Lifeline customers, a group excluded from the FCC's *Reference Book* analysis. This made the data unreliable as an estimate of non-Lifeline rates. The Board attempted to exclude Lifeline customers from the analysis, but it cannot represent that the resulting data were or remain reliable.

As the Board has stated in previous rate reviews, the Board continues to believe that the Commission's published urban benchmark rate of $34.58 does not comply with law. That figure is two standard deviations above the mean urban rate. Three and one-half years ago the Tenth Circuit rejected this methodology as incompatible with the Commission's statutory duties under section 254. As the Board said in subsequent comments, a benchmark rate cannot satisfy the statute if it is higher than 125 percent of the national urban average rate.

Data in the Commission's 2006 *Reference Book* show that average urban rates are $24.74. 125 percent of that figure is $30.92. Considering all of the above factors, the Board estimates that the average Vermont residential customer pays significantly more than $30.92 per month for local service. This includes all fixed charges (including the federal SLC), taxes and universal service charges. It also recognizes the explicit credit given monthly to FairPoint customers as the result of federal universal service payments. Therefore, the Board concludes that the rates of FairPoint customers are not reasonably comparable to the urban rates of customers nationwide.

A state that certifies that its rates are not reasonably comparable must fully explain its rate comparability analysis and provide data supporting its certification, including but not limited to residential rate data for rural areas within the state served by non-rural ILECs. As explained above, residential rates for FairPoint are uniform throughout FairPoint's area. They therefore are the same rates that apply in any and all subsets, including "rural areas."

When a state certifies that the rates are not reasonably comparable, it must also explain why the rates are not reasonably comparable and explain what action it intends to take to achieve rate comparability. Rates for FairPoint are not reasonably comparable because FairPoint receives insufficient federal support from the Commission. As the Board previously has argued in many filings in Docket 96-45, Verizon-Vermont rates were high because Verizon-Vermont served a rural, sparsely populated area in a challenging climate and over difficult terrain. This inevitably lead to high loop and switch costs, on average, across all Verizon-Vermont customers. These

facts remain true for FairPoint as well, as it moves forward in providing service to customers formerly served by Verizon-Vermont.

Vermont does not contemplate taking any additional actions within the state to obtain reasonably comparable rates. Any such action would be pointless. As noted above, FairPoint rates already are uniform throughout its study area. Even if Vermont were to adopt a new explicit state universal service fund the benefits would be negligible. FairPoint serves approximately 85 percent of wireline customers in the state. Therefore on an aggregate basis the added bill surcharges to fund such a new program would almost entirely offset the benefits. Costs would still be paid by the same pool of customers, and the average rate, which is too high, would not be reduced.

Vermont intends to continue to advocate for additional federal support for the customers of FairPoint. Over the last 15 years, the Board has repeatedly argued that federal support to these Vermont customers has been insufficient. The Board continues to believe that tens of thousands of Vermonters are disadvantaged, as against similarly situated customers in other states, because a majority of Vermont's rural customers happen to be served by a large company, and because federal support unfairly discriminates against such customers. The Board intends to continue to argue to the Commission, the courts and to Congress that the majority of Vermont's customers need additional federal support under 47 U.S.C. § 254 in order to achieve comparable rates.

Sincerely,

James Volz
Chairman

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