

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7169

Petition of Vermont Department of Public Service for an Investigation into the Universal Service Fund Charge for Fiscal Year 2007)
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Order entered: 6/29/2006

I. INTRODUCTION

Pursuant to 30 V.S.A. § 7523, the Vermont Public Service Board ("Board") is annually required to approve the Vermont Universal Service Fund ("VUSF") surcharge rate. The VUSF was established for the purpose of :

creating a financial structure that will allow every Vermont household to obtain basic telecommunications service at an affordable price, and to finance that structure with a proportional charge on all telecommunications transactions that interact with the public switched network.¹

As intended, the VUSF provides the financial structure to raise the necessary monies to support Emergency-911 ("E-911"), Lifeline services ("Lifeline") for eligible low-income customers, and telecommunication relay services ("TRS") for the hearing impaired.

In this proceeding, the Board is asked to approve a stipulation ("Stipulation") between the Vermont Department of Public Service ("Department"), Verizon New England Inc., d/b/a Verizon-Vermont ("Verizon"), and the Nine Independent Vermont Incumbent Local Exchange Carriers (the "Independents").² By stipulation, the parties propose to increase the VUSF charge from 1.15% to 1.25% for Fiscal Year 2007 ("FY 07"). The effect of the proposed rate would increase telecommunications bills by approximately five cents (\$0.05) per month, assuming an

1. 30 V.S.A. § 7501.

2. Franklin Telephone Company, Inc., Ludlow Telephone Company, Inc., Northfield Telephone Company, Inc., Perkinsville Telephone Company, Inc., Shoreham Telephone Company, Inc., STE/NE Acquisition Corp., d/b/a Northland Telephone Company of Vermont, d/b/a FairPoint New England, Topsham Telephone Company, Inc., Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom, and Vermont Telephone Company, Inc.

average residential telephone bill of \$50 per month. Based on the projections submitted as record evidence, the proposed rate will generate sufficient funds to meet the financial obligations of the VUSF. Therefore, I recommend that the Board approve and adopt the terms of the stipulation.

Background

30 V.S.A. § 7523 required the Board to annually issue an order re-establishing the VUSF rate by June 15 for the 12-month period starting on July 1. In 2006, 30 V.S.A. § 7523 was amended by H. 879. As amended, Section 7523 now requires the Board to annually enter such an order by July 15 and announce a new rate for the 12-month period starting on September 1. If the Vermont General Assembly does not enact an authorization amount for E-911 by June 15, the Board may then defer its decision until 30 days after the E-911 authorization is approved. The 2007 appropriation for E-911 was established by appropriation Bill H. 811, and enacted on June 1, 2006.

Procedural History

Prior to the enactment of H. 879, the DPS filed on April 7, 2006, a petition with the Board requesting approval to temporarily set the VUSF surcharge rate at 2% for the fiscal year beginning July 1, 2006.

On April 28, 2006, a prehearing conference was held for the purpose of establishing a procedural schedule. The following parties appeared at the conference: James Porter, Esq., for the Department; Benjamin Marks, Esq., of Sheehey Furlong & Behm P.C., for Verizon; and Joslyn Wilschek, Esq., of Primmer Piper Eggleston & Cramer P.C., for the Independents.

On May 22, 2006, the Department submitted testimony and exhibits modifying its recommendation to reflect a surcharge rate for FY 07 of 1.25%.

On June 1, 2006, the Department filed with the Board a stipulation and agreement asking Board approval of a 1.25% VUSF rate for FY 07, starting July 1, 2006.

On June 22, 2006, the Independents filed a letter with the Board seeking a waiver from the Board's requirement to provide advanced customer notice of the proposed increase in the VUSF rate.³ No party objected to the Independent's waiver request.

3. See Docket No. 5903, Final Order of July 2, 1999, pgs. 41-44, 97-99.

Stipulation

This proceeding does not present any contested issues of fact. In accordance with the Stipulation, the Department, Verizon and the Independents (collectively, the "Stipulating Parties") each agree that a VUSF surcharge rate of 1.25% is appropriate and should provide sufficient funds during the 12-month fiscal year period starting on July 1, 2006. The Stipulating Parties also agree that the Hearing Officer may make findings in this docket that are consistent with the Stipulation and testimony of Department witness Sharon Allen, and Exhs. DPS-SLA-1 through DPS-SLA-4, filed with the Board on May 22, 2006, regarding the VUSF's carry-over fund balance from the previous fiscal year, the revenue base and disbursement requirements. Further, the Stipulating Parties agree that the Stipulation shall not have precedential effect on future proceedings involving the Department, Verizon or the Independents, except to enforce the Stipulation.

II. FINDINGS

Based upon the stipulation, the prefiled testimony and accompanying exhibits submitted as record evidence, I make the following findings in accordance with 30 V.S.A. § 8.

Carry-forward Fund Balance

1. The FY 06 ending VUSF cash balance that will be carried forward as the FY 07 beginning cash balance is projected to be \$677,338. Allen pf. at 2; exh. DPS-SLA-1.
2. The FY 07 ending VUSF cash balance, is estimated to be \$604,936, assuming estimates for VUSF program disbursements are accurate and revenues materialize. Exh. DPS-SLA-1.

Revenues and Fund Balance

3. Each year the Department is provided an estimate of eligible intrastate telecommunications revenues for all companies operating in Vermont. This year, Solix, Inc. ("Solix") estimated that FY 06 revenues (ending June 30, 2006) will amount to approximately \$397,957,076. The projections are based on actual revenues through the end of March, 2006, and estimates for the remaining months of the fiscal year. For FY 07, Solix estimates that total Vermont revenues will be .85% more than FY 06 revenues, or approximately \$401,335,634. Allen pf. at 5.

4. Rather than adopt Solix's estimate of FY 07 intrastate telecommunications revenues, the Department instead assumed that total intrastate revenues would amount to \$400,941,754, an increase of .75% in FY 07. Allen pf. at 5.

5. Applying the recommended VUSF surcharge of 1.25% against the Department's estimated FY 07 total revenue of \$400,941,754 should generate FY 07 VUSF revenues of approximately \$5,011,772. Exh. DPS- SLA 1.

6. The proposed FY 07 surcharge may produce an estimated cash balance of \$604,936⁴ at the end of FY 07, after total program disbursements of \$5,084,174, and assuming that the total number of Lifeline recipients grows by 5%, Vermont TRS billable minutes of use grows by 5%, and Vermont-based telecommunications revenues materialize as anticipated by the Department. Exhs. DPS-SLA-1, 2 and 3.

7. An ending fund balance of \$604,936 ensures that fluctuations in monthly cash flow will not require borrowing by the fiscal agent in order to make authorized disbursements and ensures that temporary deviations between projected and actual revenues and expenses do not interfere with the daily operation of the VUSF programs. Allen pf. at 5- 6.

Disbursements

8. VUSF disbursements are permitted under 30 V.S.A. § 7511 for the following purposes: to make payments to the fiscal agent for services rendered under contract; to support the VTRS; to support the Vermont Lifeline program; and to support E-911 services. Allen pf. at 3.

Disbursements to the Fiscal Agent

9. The estimated costs of the fiscal agent for FY 07 is \$120,600. An additional \$25,000 is also included in the budget to cover the expected costs of a carrier audit. Allen pf. at 3-4; exh. DPS-SLA 1.

Disbursements for Telecommunications Relay Service

10. Funds to support the VTRS are disbursed to the state treasurer in an amount determined by the Commissioner of Public Service to be reasonable. 30 V.S.A. § 7512.

4. Determined by adding the FY 06 ending cash balance of \$677,338 to the estimated FY 07 revenues of \$5,011,772 less projected program disbursements of \$5,084,174 in FY 07.

11. For FY 07, the estimated budget for VTRS is \$346,857. Anticipated disbursements are based on current VTRS calling trends. The projected budget includes \$31,200 to pay for outreach programs. Allen pf. at 4-5; exhs. DPS-SLA-1 and 3.

12. An additional \$75,000 has been budgeted for an equipment distribution program associated with VTRS that is authorized by 30 V.S.A. § 218a(e). This program has been administered by the Vermont Center for the Deaf and Hard of Hearing under a contract that expires on June 30, 2008. Allen pf. at 4; exh. DPS-SLA-1.

13. The total estimated FY 07 disbursements to the VTRS program amounts to \$421,857. Findings 10-12, above.

Disbursements for Lifeline

14. Funds to support the Vermont Telephone Lifeline Program are disbursed to telecommunications service providers that issue Lifeline credits to end-users. 30 V.S.A. § 7513.

15. For FY 07, the estimated budget for Lifeline services amounts to \$1,112,605. Allen pf. at 3; exh. DPS-SLA-2.

16. Lifeline program costs are based on FY 06 projected average monthly enrollment trends. The amount also takes into account Lifeline credits reimbursed by the state fund, as well as the benefit of providing non-published numbers to Lifeline-eligible persons who have final court approved "relief-from-abuse" orders. Allen pf. at 3, 4; exh. DPS-SLA-2.

17. The estimated budget to pay for Lifeline administrative costs is \$102,475. Allen pf. at 4; exh. DPS-SLA-1.

18. The total estimated FY 07 disbursements to the Lifeline program amounts to \$1,215,080. Findings 15 and 17, above.

Disbursements for Enhanced 911

19. Funds to support E-911 services will be paid by the fiscal agent to the state treasurer for deposit into the E-911 special fund. 30 V.S.A. § 7514.

20. The E-911 budget of \$3,301,637 was established by the Fiscal Year 2007 Appropriations Act, which establishes the amount that may be transferred from the VUSF to E-911. Allen pf. at 4; exh. DPS-SLA-1.

Total Program Disbursements

21. Total disbursements for VUSF program obligations during FY 07 are projected to be \$5,084,174. Allen pf. at 5; exh. DPS-SLA-1.

Customer Notification Requirements

22. Each telecommunications service provider required to collect monies for the VUSF should provide, in the first bill that includes a change in the VUSF surcharge, a rate-change notification. If the order setting the VUSF rate is issued too late for the provider to place the notice in the first bill, due to the time required for printing, the notice should be included in the earliest feasible billing. Allen pf. at 6; Stipulation at para. 3a.

23. Each local exchange carrier (both incumbent and competitive) and all wireless eligible telecommunications carriers should provide customer notification of the Lifeline program eligibility criteria and the application process during the first month of the calendar year 2007. Stipulation at para. 3b.

24. The notices should be in the form designed by the Department, and included as a part of the stipulation. Exh. DPS-SLA-4; Stipulation at para. 3c.

III. DISCUSSION

In this proceeding, the Board is asked to approve a stipulation that will fully fund programs that provide important telecommunications services to many Vermonters. These programs include Lifeline services, which ensure affordable telecommunications services are available to eligible customers, telecommunications relay services for the hearing impaired, and E-911 services for all customers.

Although I may not agree entirely with the conservative estimates that the Department relied on to derive projected intrastate revenues, I do recommend that the Board approve the stipulation and establish a charge of 1.25% for the 12-month period starting on July 1, 2006.⁵ The proposed charge should result in a FY 07 ending cash balance that modestly exceeds anticipated disbursements during the fiscal year. Based on the evidentiary record, the proposed

5. As stated above, the Department revised Solix's projected intrastate revenues downward by 0.10% because the Department believes that an increasing number of consumers have voluntarily disconnected their traditional wire-line and wire-less services and migrated to Voice over Internet Protocol ("VOIP") service providers that do not contribute to the VUSF. Allen pf. at 5. This assertion, however, is without basis. In this proceeding, no party presented evidence suggesting Vermont telecommunications carriers have lost a significant number of lines to VOIP services providers. Further, on April 20, 2006, Vonage America, Inc. ("Vonage") signed a Memorandum of Understanding with the Chairman of the Board. In the MOU, Vonage, which is a VOIP service provider operating in Vermont, agreed to contribute to the E-911 fund at a rate of \$0.25 per access line of service provisioned to a Vermont address.

charge would ensure the uninterrupted operation of each VUSF program during the fiscal year. Additionally, I recommend that the Board approve the proposed program disbursements in the amount of \$5,084,174. The Department has estimated program disbursements in a manner that ensures each program has the necessary funds to provide services to eligible customers and to operate enhanced 911 services without interruption.

In accordance with 30 V.S.A. § 7511, the VUSF money collected during FY 07 would be distributed by the fiscal agent as follows:

(a) \$120,600 to pay costs payable to the fiscal agent under its contract with the Board, plus an additional \$25,000 to audit carrier records in FY 07.

(b) \$346,857 to support the Vermont Telecommunications Relay Service in the manner provided by section 7512 of Title 30 and an additional \$75,000 for the Vermont adaptive equipment distribution program associated with VTRS.

(c) \$1,215,080 to support the Vermont Lifeline program and administrative costs in the manner provided by section 7513 of Title 30.

(d) \$3,301,637 to support E-911 services in the manner provided by section 7514 of Title 30.

Change in Fiscal Year

During this proceeding, H. 879 was enacted. The effect of this amendment was to change the starting date of the VUSF fiscal year from July 1 to September 1. As a result, the Department's analysis of forecasted VUSF revenues and program disbursements only includes the 12-month period starting July 1, 2006. In order to ensure that the VUSF is adequately funded during the two-month period at the end of FY 07 (July and August, 2007), the Department will file a petition by June 1, 2007, either seeking to establish an interim rate to bridge the time gap between the end of FY 07 and the start of FY 08, or the Department will recommend that the Board extend the effective date of the proposed 1.25% rate through August 31, 2007. The Department's recommendation will be informed by the actual ending cash balance in June, 2007. No party objected to the Department having the discretion to make such a proposal at the end of FY 07.

Customer Notification Requirements

There is no dispute among the parties concerning the customer notification requirements. Informing customers of the services offered by the VUSF programs ensures a broad opportunity for program participation by all qualifying ratepayers. I recommend that the Board adopt and order these notification requirements of all carriers certified to provide telecommunications services in Vermont, including wireless eligible telecommunications carriers. Requiring wireless carriers to notify customers is consistent with the Eligible Telecommunications Company notification and advertising conditions.

Advanced Customer Notice Waiver

Lastly, on June 22, 2006 the Independents requested a waiver of the Board's Order requiring advance notice of an increase in rates, prices or other charges of any retail service. A waiver of this requirement is necessary if the telecommunications carriers are to implement the proposed 1.25% rate as of July 1, 2006. As no party objected to the Independent's waiver request, I granted the request via email on the same date.

Opportunity to File Exceptions and Present Arguments

The Department, Verizon and the Independents have waived their opportunity to file exceptions and present arguments pursuant to 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 29 day of June, 2006.

s/Thomas S. Lyle

Thomas S. Lyle
Hearing Officer

IV. 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 Universal Service Fund charge shall be 1.25% for FY 07, unless revised in the manner provided by law.
3. Each telecommunications service provider, including wireless eligible telecommunications carriers, required to collect the USF charge shall provide notification of the Lifeline eligibility criteria and application process during the first month of calendar year 2007. All notices shall conform to the language contained in Exh. DPS-SLA-4. If, after negotiation, a telecommunications service provider and the Department cannot agree on the form of the notice, then the parties can petition the Board for resolution of the conflict.
4. The Fiscal Agent shall pay the following amounts for Fiscal Year 2007, and according to the following priority:
 - a. The Fiscal Agent shall transfer to its own account no more than the sum permitted under contract between the Board and the fiscal agent. The amount under contract is not expected to exceed \$120,600 for the fiscal year. In addition, pursuant to the Fiscal Agent's contract with the Board, the Fiscal Agent may request, upon 30-day's written notice to the Board and the Department, an additional \$25,000 to be transferred to its own account to pay for the cost of an independent audit of the VUSF.
 - b. The Fiscal Agent shall transfer to the State Treasurer, in monthly payments, funds necessary to adequately support the Vermont Telecommunications Relay Service and an additional \$75,000 for the Vermont Equipment Distribution Program associated with VTRS and carried out by an independent contractor. In no event shall the sums transferred exceed \$346,857 during Fiscal Year 2007, unless otherwise approved by the Board.
 - c. The Fiscal Agent shall recognize legitimate claims from local exchange carriers for credits and reimbursable expenses under the Vermont Lifeline program. It is anticipated that the annual total of all such claims will amount to \$1,112,605. An additional \$102,475

may also be made available for the purpose of paying for appropriate and necessary administrative expenses.

d. The Fiscal Agent is authorized to make monthly transfers to the State Treasurer to support enhanced-911 services at an annual rate of \$3,301,637.

5. The Department shall file a petition no later than June 1, 2007, requesting the Board to approve an interim VUSF rate to bridge the two-month time gap between the end of FY 07 and the beginning of FY 08 on September 1, 2007. If such an interim rate is unnecessary, then the Department shall request Board approval extending the effective date of the 1.25% rate through August 31, 2007.

6. Telecommunications carriers are hereby granted temporary relief from providing advance customer notice of the increase in the VUSF rate, provided that such customer notice is provided by no later than the second billing cycle after the effective date of this Order.

7. The Board shall retain jurisdiction over this docket to make any further orders that may be required to administer the Vermont Universal Service Fund. Thomas Lyle is designated as Hearing Officer to consider and report upon any further proceedings that may be appropriate in this docket.

DATED at Montpelier, Vermont, this 29th day of June, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 29, 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: 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.