STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7499

Petition of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, to eliminate requirement of separate publication and distribution of white pages and Yellow Pages	)))))

Order entered: 2/10/2010

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") approve a memorandum of understanding between FairPoint Communications ("FairPoint")[1] and the Vermont Department of Public Service ("Department") that will allow the publication and distribution of a single telephone directory for the customers of FairPoint in Vermont.

II. PROCEDURAL BACKGROUND

On January 26, 2009, FairPoint filed a petition ("Petition") with the Board seeking to be relieved from the effects of the decision made in September of 2005 by its predecessor, Verizon Vermont[2], to separate the publication and distribution of white page and yellow page telephone number listings into two directories.[3]

---

1. The formal legal name of this entity is Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications.

2. The formal legal name of this entity was Verizon New England Inc., d/b/a Verizon Vermont. In February of 2008, the Board approved the sale of Verizon Vermont's Vermont telecommunications business to FairPoint Communications.

3. Verizon Vermont decided to create the two separate directories in response to the Board's final order approving its alternative regulation plan. *See* Docket 6959, *Investigation Into a Successor Incentive Regulation Plan, etc.*, Order of 9/26/05 at 49.

On March 26, 2009, a prehearing conference was convened in this matter. Appearances were entered by Peter H. Zamore, Esq., of Sheehey Furlong & Behm P.C., for FairPoint, and John J. Cotter, Esq., on behalf of the Department. At the prehearing conference, FairPoint proposed a stay of this proceeding for two months. FairPoint explained that it needed this time to address a recent, material development involving Idearc, Inc. ("Idearc"), the publisher of the telephone directories at issue in this case. The Department supported FairPoint's request.

On March 27, 2009, I issued a Prehearing Conference Memorandum and Schedule in which I granted the Parties' request to stay this docket, except that I established an intervention deadline of April 17, 2009.

No petitions to intervene were filed in this proceeding.

On June 22, 2009, the Department filed a Memorandum of Understanding ("MOU") with FairPoint Communications.[4] The MOU reflects the Parties' agreement that the public interest would be best served by publishing and distributing a single book combining the white pages and yellow pages.

On August 19, 2009, I sent a memorandum to the Parties requesting additional information concerning the MOU and the underlying proposal to integrate the publication of the white and yellow pages into a single volume.

On September 3, 2009, the Department filed a letter responding to the questions directed to the Department in my memorandum of August 19, 2009.[5]

On September 11, 2009, FairPoint filed a letter responding to the questions directed to the company in my memorandum of August 19, 2009.[6]

---

4. The MOU is attached hereto and cited herein as "MOU- __".

5. The Department's answers are cited in this Proposal for Decision as "DPS-A-__."

6. The answers of FairPoint Communications are cited herein as "FP-A-__." I hereby admit into evidence the MOU, as well as the Department's letter of September 3, 2009, and FairPoint's letter of September 11, 2009. Any party who wishes to object to the admission into evidence of these documents should do so in conjunction with filing comments, if any, on this proposal for decision.

III. FINDINGS

1. FairPoint Communications is a Delaware limited liability company that offers telecommunications service to the public in Vermont on a common carrier basis and is therefore subject to the Board's jurisdiction. Petition at 1; 30 V.S.A. §§ 201, 203.

2. Verizon Directories Corporation ("VDC") is an entity that formerly published and distributed telephone directories in Vermont for Verizon Vermont. Petition at 2.

3. On January 31, 2006, in response to the Board's final order in Docket 6959, Verizon Vermont informed the Board that VDC would begin publishing and distributing separate books for white pages and yellow pages, and would advise advertisers to this effect. Petition at 2.

4. In November of 2006, VDC sold its Vermont directory business to Idearc. Petition at 2.

5. Idearc now distributes and publishes the separate white pages and yellow pages directories. MOU at 2.

6. Idearc is not affiliated in any way with Verizon or with FairPoint. Petition at 2.

7. The publication and distribution in Vermont of separate directories for white pages and yellow pages began in May of 2007. Petition at 2.

8. Idearc will begin publishing and distributing a combined volume of white pages and yellow pages beginning no later than 90 days after the MOU is approved by the Board. MOU at 2.

9. Nothing in the MOU prevents Idearc, FairPoint or any other company in the future from resuming the separate publication and distribution of white pages and yellow pages. MOU at ¶ 3.

10. At present, Idearc bears the costs for publishing and distributing white pages and pays FairPoint a fee of $0.04 per telephone number listing. In exchange, Idearc has a license to use the name and logo of FairPoint on both the white and yellow pages publications. FP-A-2.

11. At present, Idearc bears the cost of publishing the yellow pages directory. FP-A-5.

12. If the Board approves the MOU, Idearc will continue to bear the cost of publishing the combined directory containing the telephone listings from the white pages and the yellow pages. FP-A-7.

13. FairPoint does not have an estimate of the economic value, if any, of a combined directory, either to FairPoint or to Idearc. FP-A-8.

14. FairPoint has received numerous complaints from customers concerning the inconvenience of the separate directories and their staggered distribution. Petition at 2; FP-A-8.

15. The Department's Consumer Affairs and Public Information Division has received numerous complaints from consumers regarding the two, separate directories. DPS-A-12.

16. The Department has received input from the public indicating that telephone customers prefer to receive a combined version of the white pages and yellow pages directories as opposed to two separate directories. Petition at 2; FP-A-8; DPS-A-12.

17. A combined directory will better serve telephone customers. FP-A-8; DPS-A-12.

18. Recombining the white pages and yellow pages directories would produce a benefit to consumers even in the absence of an offsetting rate reduction. DPS-A-12.

IV. DISCUSSION

In this docket, FairPoint seeks to be relieved of a regulatory condition that was imposed as part of Verizon Vermont's alternative regulation plan in 2005.[7] Specifically, FairPoint has petitioned for permission to reintegrate the publication and distribution of its white pages and yellow pages directories without incurring an off-setting obligation to annually recognize $7 million of imputed revenues for the benefit of its ratepayers.[8]

Subject to the terms of the attached MOU that was executed on June 22, 2009, the Department has joined FairPoint in proposing that the Board eliminate the alternative regulation condition that has resulted in separate telephone directories, because Verizon Vermont's decision to publish two directories in place of one combined book has proven highly unpopular with

---

7. As a condition of the sale approved in Docket 7270, FairPoint assumed all of the regulatory terms and conditions that previously applied to Verizon Vermont, including the alternative regulation plan that was approved for Verizon Vermont in Docket 6959.

8. *See* Docket 6959, Order dated 9/26/05 at 49-50. The Board ordered Verizon Vermont to credit this $7 million as revenue to ratepayers because at the time, Verizon Vermont's unregulated affiliate was still publishing a single, integrated telephone directory without paying for the use of the Verizon Vermont name and logo. *Id.* at 48.

consumers, judging by the volume of complaints the Department has received through its consumer affairs office.[9]

I conclude that the public interest would best be served by the Board's approval of the MOU. While it is true that FairPoint agreed to assume all of Verizon Vermont's regulatory obligations as a condition of purchasing Verizon Vermont's Vermont operating assets in 2008, this particular condition in Verizon's alternative regulation plan reflects a chapter of Verizon Vermont's unique regulatory history with roots that reach back to events of at least a quarter of a century ago, to the divestiture of AT&T in 1984.[10]

In 2005, when Verizon Vermont was seeking alternative regulatory treatment in Vermont, its baseline cost-of-service was set to produce rates that reflected a legal reality as represented by Verizon Vermont to the Board, namely, that VDC — Verizon Vermont's unregulated yellow pages business — had become entirely separate from Verizon Vermont's regulated Vermont operations. According to Verzion Vermont, this new reality now meant none of the revenues generated by VDC should or would any longer inure to the benefit of Verizon Vermont customers, who, over many decades, had paid the telephone rates that financed the creation of the good will and name-brand recognition of Verizon Vermont's yellow pages directory.[11]

However, in 2005, there also was evidence before the Board of a conflicting, physical reality: notwithstanding Verizon Vermont's insistence upon the "legal" separateness of its yellow pages enterprise, Verizon Vermont was continuing the long-standing practice of allowing its white pages to be published together with the yellow pages in a single bound volume, thus giving rise to the contradictory perception that while the revenues from Verizon Vermont's legally-separate yellow pages operations were now flowing strictly to VDC, the unregulated yellow pages affiliate in fact was continuing to benefit from an association with Verizon Vermont's

---

9. *See* Finding 15, above.

10. *See* Docket 6969 Order at 45-46 (tracing regulatory history of cost allocation and revenue sharing when directory publishing functions were first part of and then were separated from regulated telephone company operations).

11. *Id.* at 47-48.

regulated telephone operations, as evidenced by its continued use of the white pages in its publication.[12]

Faced with this contradiction, the Board gave Verizon Vermont the following choice as a condition for receiving alternative regulatory treatment: Verizon Vermont could either physically conform its conduct to fit its legal reality by separating the white pages from the yellow pages or Verizon Vermont could choose to continue publishing one telephone book and accept an imputed annual revenue adjustment to its cost-of-service rates of $7 million,[13] thereby compensating its ratepayers for the benefit of using a single, integrated telephone directory to leverage the value of Verizon Vermont's white pages and its regulated operations in Vermont.[14] Verizon Vermont chose to begin publishing two separate telephone directories.[15]

The evidentiary record before the Board in 2005 in Docket 6959 gave no indication that Verizon Vermont would sell its Vermont operating assets to FairPoint in 2008, before the expiration of the term of Verizon Vermont's alternative regulation plan. It therefore makes sense to now reconsider whether FairPoint should continue to shoulder the ill effects— customer complaints and the attendant loss of customer good will— of Verizon Vermont's decision to publish two directories. This particular condition of the Docket 6959 Order was tailored specifically for Verizon Vermont, to correct — for ratepayer benefit— a dissonant set of circumstances that belonged to the legacy of Verizon Vermont's tenure as Vermont's largest incumbent local exchange carrier. In its present application to FairPoint, though, this condition of Verizon Vermont's alternative regulation plan has proven burdensome to the very ratepayers whose equitable interests it was intended to protect. It thus makes little sense at this time to compel FairPoint to continue devoting its resources to responding to customer dissatisfaction and

---

12. *Id.* at 48-49.

13. The $7 million annual rate adjustment originally was derived from the cost-of-service review and attendant rate-setting that took place in Docket 6167, the proceeding pursuant to which Verizon Vermont's first alternative regulation plan was approved and implemented. *See* Docket 6167, Order of 3/24/00. The Board included the $7 million adjustment in Verizon Vermont's cost-of-service to reflect the amount of revenue that Verizon Vermont received from its yellow pages enterprise. The $7 million figure was based on the amount of contribution from the yellow pages enterprise actually recorded by Verizon Vermont on its books in the June 1998 test year that was used in that cost-of-service review. Docket 6959 Order at 44, findings 39-40.

14. *Id.* at 49-50.

15. *Id.* at 50.

frustration born of Verizon Vermont's decision to create two telephone directories where previously a single book sufficed.

The MOU states that the Department and FairPoint "have made specific compromises to reach the agreements reflected" in their settlement.[16] Therefore, in recommending that the Board approve this MOU, I rely on the fact that the Department, in its role as public advocate, has represented that "recombining the directories would be a benefit to consumers even in the absence of an offsetting rate reduction."[17] I am also mindful of the fact that, unlike in the case of Verizon Vermont and its non-regulated yellow pages affiliate, FairPoint is not in any way affiliated with Idearc, the present publisher of the two directories.[18] It therefore is not clear to me that the $7 million annual adjustment remains an appropriate amount of revenue to impute to FairPoint for ratepayers in compensation for Idearc's use of the FairPoint name and logo in publishing a combined directory.[19] However, because of the "bottom line" nature of the Parties' settlement, the magnitude of the $7 million adjustment at issue, and the apparent absence[20] at present of any revenue-sharing arrangement between FairPoint and its ratepayers relating to the licensing of FairPoint's name and logo, I conclude that it would be appropriate for the Board to include in its approval of the MOU the following conditions:

> (1) At this time, FairPoint shall be deemed to be temporarily excused, but not permanently relieved, from making an annual $7 million adjustment to its rates that would otherwise be required under the terms of the Docket 6959 Order as the compensation due to ratepayers for facilitating Idearc's publication and distribution of a combined volume of white pages and the yellow pages using FairPoint's name and logo; and

---

16. MOU at ¶6.

17. DPS-A-12.

18. Finding 6, above.

19. Furthermore, to date there has been no regulatory review of the adequacy of the present fee ($.04 per telephone number listing) paid by Idearc to FairPoint for the licensed use of FairPoint's name and logo. This is because FairPoint simply stepped into Verizon Vermont's shoes in assuming the terms of Verizon Vermont's alternative regulation plan.

20. I infer this point from the fact that FairPoint was not able to provide an estimate of the economic value of a combined directory to FairPoint or to Idearc. *See* finding 13, above. It is reasonable to infer that if FairPoint does not have an estimate of this value, then that value has not been made the subject of any value-sharing arrangement with ratepayers.

(2) In the next cost-of-service review to test the justness and reasonableness of FairPoint's rates— be this in the context of an extension of the existing alternative regulation plan approved in Docket 6959, a proceeding to renew or establish a new alternative regulation plan, or a traditional telephone rate case — the Department shall have the option to advocate for a reasonable and appropriate adjustment that will allow ratepayers to share, on a going-forward basis, in whatever economic benefit that FairPoint will realize from reversing Verizon's choice to publish two directories in place of one.[21]

V. CONCLUSION

For the foregoing reasons, I recommend that the Board adopt the findings of fact and conclusions of law set forth in this Proposal for Decision. Findings proposed and legal arguments made in the filings of this docket that are inconsistent with this Proposal for Decision are hereby rejected. I further recommend that the Board approve the MOU between the Department and FairPoint, subject to the conditions I have outlined above.

In the MOU, the parties waived the opportunity for review of this Proposal for Decision, briefing and oral argument, in accordance with 3 V.S.A. § 811.[22] However, because my approval recommendation to the Board includes conditions not contemplated by the MOU, I am serving this Proposal for Decision on the parties to this proceeding, pursuant to 3 V.S.A § 811.

Dated at Montpelier, Vermont, this 20th day of November, 2009.

s/June E. Tierney
June E. Tierney, Esq.
Hearing Officer

---

21. On October 24, 2009, FairPoint filed a petition in the Southern District of New York for Chapter 11 bankruptcy protection. Accordingly, this condition should be ordered to apply with equal force to any successor-in-interest or subsequent owner or assign of FairPoint Communications' assets and operations in Vermont.

22. MOU at ¶ 1.

VI. Board Discussion

On December 8, 2009, FairPoint and the Department separately filed comments on the Proposal for Decision ("PFD") in which they objected to the two conditions proposed by the Hearing Officer. On the whole, we accept the Hearing Officer's proposed decision. However, we will make one modification based upon the comments by the parties in response to the PFD.

FairPoint and the Department urge us to reject the first proposed condition that provides FairPoint with temporary, but not permanent, relief from making an annual $7 million adjustment to its rates as required by our Order in Docket 6959 as compensation to ratepayers for publication of a combined volume of white pages and yellow pages. FairPoint maintains that this condition leaves the Company exposed to automatic reinstatement of the $7 million adjustment after the directories are recombined. The Department, in turn, expresses concern that the first condition contains no standard for determining the circumstances under which reinstating the $7 million rate adjustment would be warranted, and that this reinstatement risk may deter FairPoint from taking the consumer-friendly step of returning to publishing a single-volume directory.

With respect to the second proposed condition, both parties view this condition to be unnecessary and therefore have asked us not to adopt this condition.

We conclude, on balance, that these conditions are not necessary. The first condition would keep FairPoint subject to the possible future imposition of a $7 million rate adjustment that is based on its predecessor's (Verizon) yellow-pages revenues (*see* footnote 13 in the PFD). We agree with the parties that FairPoint should not remain subject to this potential, Verizon-derived adjustment. Instead, as FairPoint acknowledges in its comments, FairPoint (and any successor company) would remain subject to potential rate adjustments in future proceedings.[23]

We similarly agree with the parties that the second proposed condition (regarding consideration of directory-activity revenues in a future rate proceeding) is unnecessary because it merely restates the existing authority of the Board and the Department. However, we take this opportunity to make clear, as the Department suggests, "that the revenues associated with FairPoint's directory activities will be accounted for in the next review of the Company's rates,

---

23. Letter from Peter H. Zamore, Esq., to Susan M. Hudson, Clerk of the Board, dated December 8, 2009, at 2.

regardless of the context in which that occurs . . . ."[24] Such consideration in the next rate review includes the review of the rates of any successor-in-interest or subsequent owner of FairPoint's assets and operations in Vermont.

VII. 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, as modified above.

2. The Memorandum of Understanding between Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), and the Vermont Department of Public Service ("Department") is approved.

3. This docket shall be closed.

---

24. Letter from John Cotter, Esq., to Susan M. Hudson, Clerk of the Board, dated December 8, 2009, at 2.

Dated at Montpelier, Vermont, this 10th day of February, 2010.

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

OFFICE OF THE CLERK

FILED: February 10, 2010

ATTEST: s/Judith C. Whitney
Deputy 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: psb.clerk@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.