

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8390

Petition of Vermont Department of Public Service for an)	
investigation into the adequacy of Telephone Operating)	Hearing at
Company of Vermont LLC, d/b/a FairPoint)	Montpelier, Vermont
Communications, provision of service quality)	September 17, 2015

Order entered: 12/18/2015

PRESENT: James Volz, Chairman
Margaret Cheney, Board Member
Sarah Hofmann, Board Member

APPEARANCES: Peter H. Zamore, Esq.
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I. INTRODUCTION

This proceeding involves an investigation into the quality of service provided by Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint" or the "Company"). In this Order, the Vermont Public Service Board ("Board") approves a Memorandum of Understanding ("MOU") between FairPoint and the Vermont Department of Public Service ("Department") resolving certain issues raised in this proceeding and providing for a future proceeding to address additional issues.

II. BACKGROUND

On December 1, 2014, the Department filed a petition with the Board pursuant to 30 V.S.A. § 2 to open an investigation of the quality of customer service provided by FairPoint ("Petition"). In support of its petition, the Department noted FairPoint's failure to meet certain baseline service quality standards and the high number of customer complaints concerning FairPoint service interruptions and delays in repair of service. The Department also expressed concern that the quality of FairPoint's customer service could be further diminished by the labor strike called by FairPoint's union workers on October 17, 2014, as well as by a network outage that occurred on November 18, 2014, and resulted in the inability of many telephone customers in Vermont to place outbound calls, including to 911.

On December 3, 2014, the Board opened an investigation into these matters pursuant to 30 V.S.A. §§ 10 and 209. In a prehearing conference held on December 9, 2014, the Board asked parties to address a number of issues in the course of this proceeding that have been common themes in customer complaints about FairPoint, including, *inter alia*, billing practices, failure to show up for scheduled appointments, untimely provision of new service, failure to fix outages or address poor service issues quickly, and unauthorized disconnection of service.

The Department's petition to open this investigation followed a prolonged period during which FairPoint failed to meet certain service quality metrics established in Docket 5903 ("Docket 5903 Metrics"). In particular, FairPoint consistently has failed to meet the "% Troubles Cleared within 24 Hours" metrics since it began reporting under the Docket 5903 Metrics in

April 2013. As of September 4, 2014, the Department had received in excess of 70 complaints from FairPoint customers regarding service interruptions and delays in repair.¹

The number of service quality complaints increased when FairPoint's union-represented employees went on strike from October 2014 through late February 2015. Between September 4, 2014, and November 30, 2014, alone, the Department received 388 complaints regarding the poor quality of service being provided by FairPoint.² During the strike, FairPoint failed to achieve its baseline standards for "% Troubles Cleared – Residence," "% Troubles Cleared – Business," and "% Troubles Cleared – Total" and "Calls Answered Within 20 Seconds – Residence" metrics.

On November 28, 2014, between approximately 3:00 P.M. and 8:45 P.M., FairPoint experienced a network outage caused by two fiber cuts on the network's SONET ring,³ which provides Signaling System 7 ("SS7")⁴ transport, coupled with the simultaneous failure of a passive connector. This outage included access to 911 service, such that emergency calls could not be completed. The reliable and continuous operation of FairPoint's SS7 network is critical for the provision of service to FairPoint's customers and those of other providers that rely on FairPoint's SS7 network to deliver their own services.

During the course of this proceeding, questions arose concerning FairPoint's practices regarding bill credits for customers who had suffered an outage of service for more than 24 hours – in particular, the Board was concerned about FairPoint's application of Board Rule 7.609(C), which provides, in part:

Interrupted Service Credit. Carriers shall provide customers with a credit allowance for service interruptions lasting more than twenty-four hours. The credit will be provided to customers who contact the carrier reporting the outage and also to customers that the carrier knows are affected by the outage.

1. Petition at 1-2, ¶ 5.

2. *Id.* at 2, ¶ 8.

3. The Synchronous Optical Network ("SONET") provides the fiber-optic transmission system for high-speed digital traffic; a SONET ring consists of two or more transmission paths between network nodes, which provide a certain back-up reliability for fiber traffic.

4. The SS7 network facilitates the connection of public switched telephone calls.

III. PROCEDURAL HISTORY

On December 1, 2014, the Department filed a petition with the Board pursuant to 30 V.S.A. § 2 to open an investigation of the quality of customer service provided by FairPoint ("Petition").

On December 3, 2014, the Board opened an investigation pursuant to 30 V.S.A. §§ 10 and 209.

On December 8, 2014, FairPoint filed a motion for approval of a protective agreement.

On December 9, 2014, the Board held a prehearing conference.

On December 11, 2014, the Board issued a Prehearing Conference Memorandum order, in which the Board requested the parties to file briefs on the Board's authority to impose penalties concerning FairPoint's service quality performance.

Motions to intervene were filed on December 15, 2014, by the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"), on December 18, 2014, by the Vermont Enhanced 911 Board ("E-911"), and on December 19, 2014, by Design Access Network, Inc. ("DAN").

On December 24, 2014, FairPoint filed a brief on the Board's authority to impose penalties.

On December 26, 2014, the Department filed a brief on the Board's authority to impose penalties.

On January 8, 2015, the Board issued an order granting intervenor status to E-911 and denying the intervention request filed by DAN. In that order, the Board invited DAN to file comments on the proceeding once an evidentiary record had been developed.

On January 13, 2015, the Board issued an order requesting information concerning FairPoint's compliance with Board Rule 7.609(C) regarding bill credits and priority treatment of service issues relating to vulnerable customers.

On January 23, 2015, the Board issued an order granting limited intervention to IBEW pursuant to Board Rule 2.209(B).

Also on January 23, 2015, the Board issued an order seeking further information from FairPoint in follow-up to the order issued on January 13, 2015.

On January 29, 2015, the Board issued an order approving the parties' protective agreement.

On March 4, 2015, IBEW withdrew its appearance in the proceeding.

On March 16, 2015, the Department filed its direct testimony. FairPoint filed a motion for confidential treatment of the Department's direct testimony on the same day.

On April 13, 2015, E-911 petitioned the Board to withdraw from the proceeding.

On April 15, 2015, FairPoint filed its direct testimony.

On April 28, 2015, the Board granted E-911 permission to withdraw.

On June 30, 2015, the Department filed rebuttal testimony. On the same day, FairPoint filed a motion for confidential treatment of that testimony.

On August 18, 2015, FairPoint and the Department filed a Memorandum of Understanding ("MOU") with supporting testimony.

On August 28, 2015, the Board issued a procedural order seeking input from the parties regarding any new process to which the introduction of the MOU might give rise.

On September 3, 2015, the Department responded to the Board's August 28th order.

On September 4, 2015, FairPoint responded to the Board's August 28th order.

On September 17, 2015, the Board held an evidentiary hearing.

On September 23, 2015, the Board issued an order requesting responses to an e-mail filed by ECFiber on September 17, 2015, regarding potential competitive impacts of the MOU provision concerning FairPoint's broadband expansion efforts. FairPoint and the Department each filed responses to ECFiber's comments on October 2, 2015.

On October 7, 2015, DAN filed comments with the Board regarding a number of issues, including the failure of the SS7 network, CAF II funding, and service quality. DAN also asked the Board to appoint an independent advocate to review the MOU.

On October 8, 2015, FairPoint and the Department filed a joint proposal for decision.

On October 22, 2015, FairPoint filed a response to DAN's October 7th comments.

Numerous public comments that expressed concerns regarding FairPoint's service quality were filed in this proceeding.

Motions for Confidential Treatment

During this proceeding, FairPoint filed two motions for confidential treatment of certain redacted information contained in the prefiled direct and rebuttal testimony filed by the Department. However, this testimony was never moved into the evidentiary record of this proceeding. Thus, we deem this prefiled testimony to be withdrawn and therefore find the related motions for confidential treatment to be moot.⁵

IV. FINDINGS

Background

1. On December 1, 2014, the Department filed a petition asking the Board to open this investigation into FairPoint's service quality. Petition at 1.

2. FairPoint and the Department entered into an MOU on August 10, 2015, that addresses FairPoint's service quality, FairPoint's efforts to secure its network after the outage that occurred in November 2014, FairPoint's bill credit practices under Board Rule 7.609(C), and Connect America Fund ("CAF") funding.⁶ Exh. Pet. Joint 1.

Service Quality

3. FairPoint's service quality is measured against performance metrics that resulted from a stipulation among certain Vermont telecommunications providers approved by the Board on July 7, 1999 (the "Docket 5903 Metrics"). *Investigation into Service Quality Standards, Privacy*

5. Our disposition of this matter appears to be consistent with the positions taken in letters filed in this Docket by the Department and FairPoint. See Letter from Dan Burke, Esq., on behalf of the Department, to Susan M. Hudson, Clerk of the Board, dated September 3, 2015; Letter from Owen J. McClain, Esq., on behalf of FairPoint, to Susan M. Hudson, Clerk of the Board, dated September 4, 2015. If the parties disagree with our conclusion on this matter, motions for reconsideration shall be filed within 10 days of the issuance of this Order.

6. See finding 27 for a description of the CAF program.

Protections, and other Consumer Safeguards for Retail Telecommunications Service, Docket 5903, Order of 7/2/99 ("Docket 5903 Order").

4. The Docket 5903 Metrics define nine performance standards by which Vermont telecommunications providers and the Board assess service quality for Vermont retail telecommunications consumers. Docket 5903 Order at 12-14.

5. For seven of the nine performance standards, the Docket 5903 Metrics define "Baseline" and quarterly "Action" levels of performance that demonstrate an "acceptable base level of service quality" to retail consumers. If a provider fails a metric and thereby triggers an action report, it must provide the Board with a full explanation for the failure and submit a plan to correct the problem. Docket 5903 at 14-16.

6. FairPoint began reporting results under the Docket 5903 Metrics on April 1, 2013, when it transitioned to those standards from its Docket 7724 Retail Service Quality Plan, under which many standards were more stringent than those currently in place under Docket 5903. M. Beth Fastiggi, FairPoint ("Fastiggi") MOU pf. at 8.

7. Since 2013, FairPoint has not achieved the Docket 5903 Metric for "% Troubles Cleared within 24 Hours – Residential." Exh. Pet. Joint-3.

8. From April 2013 through September 2014, FairPoint met the Docket 5903 Metric "% Troubles Cleared within 24 Hours – Business"; since October 2014, FairPoint has failed to achieve this metric. Exh. Pet. Joint-3.

9. Until the first quarter of 2014, FairPoint had often achieved its Docket 5903 Metric "% Troubles Cleared within 24 Hours – Total"; since the second quarter of 2014, however, FairPoint has failed to achieve this metric. Exh. Pet. Joint-3.

10. In the fourth quarter of 2014, FairPoint failed to achieve the Docket 5903 Metric "Calls Answered within 20 Seconds – Residence." Exh. Pet. Joint-3

11. From October 2014 through late February 2015, FairPoint's union-represented employees were on strike. Fastiggi MOU pf. at 8.

12. During the strike, FairPoint management personnel and contracted workers provided services normally provided by the union workforce. Fastiggi MOU pf. at 3.

13. During the strike (fourth quarter 2014 and first quarter 2015), FairPoint failed to meet the Docket 5903 Metrics for "% Troubles Cleared within 24 Hours – Residence," "Troubles Cleared within 24 Hours – Business," "Total Troubles Cleared within 24 Hours," and "Calls Answered Within 20 Seconds – Residence". Exh. Pet. Joint-3.

14. FairPoint's most recent quarterly report indicates that it has achieved all service quality metrics except the Docket 5903 Metrics for "% Troubles Cleared within 24 Hours – Residence" and "% Troubles Cleared within 24 Hours – Total". Fastiggi MOU pf. at 4; exh. Pet. Joint-3.

15. FairPoint has implemented certain operational changes since February 2015, including a new management structure. Richard Murtha, FairPoint ("Murtha") MOU pf. at 1-2; tr. 9/17/15 at 25-26 and 34-35 (Murtha).

16. FairPoint has experienced a decline in voice access lines due to increased competition. Fastiggi MOU pf. at 5.

SS7 Network Outage

17. On November 28, 2014, FairPoint experienced an outage of its SS7 network, which resulted in, among other things, the inability of many, if not all, Vermonters to make outgoing calls, including calls to the 911 system. Porter MOU pf. at 1.

18. The SS7 outage was caused by a weather event that resulted in two fiber cuts on the SONET ring that provides SS7 transport, coupled with the simultaneous failure of a passive connector. Tr. 9/17/15 at 81-84 (Lunny).

19. The reliable and continuous operation of the SS7 network is critical for FairPoint's customers as well as the customers of other providers that rely on FairPoint's SS7 network to deliver telephony services. Fastiggi MOU pf. at 3; John Lunny, FairPoint ("Lunny") MOU pf. at 4.

20. Since the SS7 network outage, FairPoint has implemented a number of network design upgrades, including redesigning the SS7 paths to avoid any passive DSX-3 connections and the conversion from bi-directional path switched-line technology to uni-directional path switched-ring technology, both of which have reduced the complexity of the design and have simplified

trouble-shooting in the event of an outage. Lunny MOU pf. at 2-3; Fred Goldstein, Department ("Goldstein") MOU pf. at 1-3.

21. Since the SS7 network outage, FairPoint has initiated a number of operational changes, including tagging network links affecting SS7 service, placing SS7 network maps in the central office, and modifying the network's alarms to more readily identify problems. Lunny MOU pf. at 2-3; Goldstein MOU pf. at 1-3.

22. FairPoint assumed responsibility for administering Vermont's 911 service on July 29, 2015. Fastiggi MOU pf. at 3.

Board Rule 7.609 Bill Credits

23. FairPoint has adopted a policy of providing bill credits to customers only when a customer calls to request a credit after an outage has been resolved and closed. Tr. 9/17/15 at 15 (Fastiggi).

24. FairPoint does not have a systems interface between its repair system and billing that allows Fairpoint to automatically credit a customer who has reported an outage that has not been repaired in 24 hours or to automatically identify outages affecting customers who do not report the outages to FairPoint. Fastiggi MOU pf. at 7.

25. The MOU requires FairPoint, within three months of the Board's approval of the MOU, to provide retroactive bill credits calculated under the Board Rule 7.609(C) formula to existing customers that were out of service for more than 24 hours between April 1, 2013, and February 28, 2015, the time period during which FairPoint transitioned to the Docket 5903 Metrics and when the strike ended. Exh. Pet. Joint-1 at 2; tr. 9/17/15 at 19 (Porter).

Connect America Fund ("CAF")

26. The CAF program was established in 2011 by the Federal Communications Commission ("FCC") to accelerate broadband build-out to households living in rural areas without access to robust broadband services. The CAF II program continues this mission by shifting federal funding from high-cost voice service support to the deployment and operation of broadband service. Fastiggi MOU pf. at 2.

27. The CAF II program makes available to FairPoint approximately \$8.8 million in annual funding for six years to implement a requirement to serve approximately 28,400 locations in Vermont with broadband service speeds of at least 10 megabits per second ("Mbps") download and 1 Mbps upload ("10/1").⁷ Fastiggi MOU pf. at 2.

28. The CAF II program will result in a total funding increase for FairPoint of just under \$200,000 because CAF II funding will replace the high-cost support formerly received under the Universal Service Funding program. Tr. 9/17/15 at 74 (Fastiggi).

29. FairPoint has accepted CAF II funding, as required by the MOU. Tr. 9/17/15 at 67 (Fastiggi).⁸

30. FairPoint's acceptance of the CAF II funding is irrevocable. Tr. 9/17/15 at 67 (Fastiggi).

31. In order to achieve the performance targets associated with the CAF II funding, FairPoint will need to contribute some of its own funds to support its CAF II efforts. Tr. 9/17/15 at 70-72 (Fastiggi); Fastiggi MOU pf. at 2.

Memorandum of Understanding

32. The MOU addresses the key issues raised in this docket (the Docket 5903 Metrics, the SS7 network, and Board Rule 7.609(C)), as well as FairPoint's participation in the CAF II program, by imposing specific obligations on FairPoint and providing for follow-up actions for issues not fully resolved by the MOU. Fastiggi MOU pf. at 1; Porter MOU pf. at 1-2.

33. The MOU provides that: (1) FairPoint will continue to report its "Troubles Cleared" metrics, but performance will be measured on an annual, rather than quarterly, basis; (2) FairPoint will be subject to no more than one Action Plan annually; and (3) the Department will not seek remedial measures relating to FairPoint's Docket 5903 metric results. Exh. Pet. Joint-1 at 4.

7. The 10/1 standard requires a network capable of enabling a user to download data from the Internet at a speed of 10 megabits per second and upload data to the Internet at a speed of 1 megabit per second.

8. For more information, see Press Release, Federal Communications Commission, *FairPoint Accepts \$37.4 Million in Annual Support from Connect America Fund to Expand and Support Broadband for Over 200,000 Consumers in 14 States* (August 19, 2015).

34. The MOU requires FairPoint to confirm in writing to the Board and Department, within three months of the issuance of this Order, that it has completed all SS7 measures set forth in the MOU, as described above. Exh. Pet. Joint-1 at 4.

35. The MOU provides that the Department will support a FairPoint petition to open a proceeding requesting that: (1) service quality reporting requirements be limited to FairPoint customers that do not have access to an alternative telecommunications provider; (2) a review be conducted of the continued appropriateness and evaluation of possible alternatives to the "Troubles Cleared" metrics; and (3) changes in FairPoint's Incentive Regulation Plan ("IRP") be adopted, as appropriate. Exh. Pet. Joint-1 at 4.

36. The MOU provides that FairPoint and the Department will request that the Board extend the term of the current IRP until the Board issues final orders in the pending proceeding addressing a new IRP (Docket No. 8337) and in the new proceeding described above to address potential changes to the definition and applicability of the service quality metrics. Exh. Pet. Joint-1 at 5.

37. The above MOU provision is intended to ensure that there is no gap in regulation of FairPoint's performance under an IRP and permits the results of the new proceeding to be incorporated into a new IRP. Tr. 9/17/15 (Porter) at 58-59.

38. In addition to the MOU, FairPoint and the Department entered into a letter agreement providing that FairPoint will give priority response to service complaints from customers with Telecommunications Service Priority designation, customers with medical issues, and customers indicating to FairPoint that a repair request has been pending for more than seven days. Exh. Pet. Joint-2; Fastiggi MOU pf. at 9.

39. Approximately 22,000 FairPoint customers will receive bill credits pursuant to the MOU. Tr. 9/17/15 at 9 (Fastiggi).

40. Under the terms of the MOU, FairPoint is obligated to train and require its call center representatives to inform any customer calling to report a service interruption or outage that a bill credit will be available if the repair is not completed in 24 hours and the customer calls back to request the credit. Exh. Pet. Joint-1 at 3.

41. Pursuant to the MOU, FairPoint commits to participate in the CAF II program described above, and failure to request CAF II funding would render the MOU null and void in its entirety. Exh. Pet. Joint-1 at 2, 5.

V. MEMORANDUM OF UNDERSTANDING

After several months of extensive discovery and negotiations, the Department and FairPoint agreed on a settlement, which has been memorialized in the MOU. In sum, under the MOU, the Department and FairPoint reached agreement on requirements to ensure the reliability of the SS7 network and steps to provide bill credits to customers who have experienced service interruptions greater than 24 hours in duration within the past two years. The Department agrees not to pursue penalties for FairPoint's failure to achieve the Docket 5903 service quality performance standards. The Department also agrees to support FairPoint's request for a separate proceeding that considers alternatives to the current performance standards, as well as continued service quality reporting requirements concerning FairPoint customers who do not have access to an alternative telecommunications provider. In exchange for the Department's agreement on the above issues, FairPoint commits to accepting CAF II funding in order to build out its broadband services to underserved areas within its service territory. The MOU entered into on August 10, 2015, addresses four main issues: (1) service quality, (2) the SS7 network, (3) Board Rule 7.609(C), and (4) CAF II.

Service Quality

The MOU represents a compromise between the parties on service quality and contains three components relating to service quality. The MOU provides that FairPoint will continue to report its performance under the Docket 5903 metrics on a quarterly basis, except for the "Troubles Cleared" metrics, which will be reported on an annual basis. The MOU modifies the manner in which the Department will regulate FairPoint's performance under the Docket 5903 metrics by requiring FairPoint to file no more than one Action Plan annually, and by establishing that the Department will not seek remedial measures relating to Docket 5903 Metric results. Finally, the MOU provides that the Department will support FairPoint in petitioning the Board to

open a future proceeding on service quality metrics. Specifically, the future proceeding would investigate whether it is appropriate to limit FairPoint's service quality reporting requirements relative only to those FairPoint customers who do not have access to an alternative provider. The investigation would also consider the continued appropriateness of the "Troubles Cleared" metrics and whether alternatives to those metrics are appropriate. Finally, the investigation would consider any requisite changes to FairPoint's IRP that might be necessary.

FairPoint and the Department represent that the filing of a single Action Plan rather than multiple Action Plans each year will reduce the reporting burden on FairPoint but that such an arrangement will not have a significant impact on the Department's efforts to address service quality issues.⁹

The Department represents that the new proceeding to address the scope and applicability of the Docket 5903 Metrics would involve a different set of experts from those employed in this proceeding and would focus on the effectiveness of the Docket 5903 Metrics and how service quality reporting metrics work in today's more competitive telecommunications market.¹⁰

SS7 Network

The MOU provides that, within three months of the issuance of this Order, FairPoint must confirm in writing to the Board and the Department that it has completed necessary upgrades and improvements to its SS7 network and procedures regarding its SS7 network.

The Department agrees that these changes, when completed, will be satisfactory and will reduce the risk of a similar SS7 network problem recurring.¹¹

Bill Credits

The MOU provides that, within three months of the Board's approval of the MOU, FairPoint will provide retroactive bill credits calculated under Board Rule 7.609(C) to existing customers who were out of service for more than 24 hours at any time between April 1, 2013,

9. Tr. 9/17/15 at 20 and 24-25 (Fastiggi), 21-22 and 28 (Porter).

10. Tr. 9/17/15 at 56-57 (Porter).

11. Goldstein MOU pf. at 1; tr. 9/17/15 at 91 (Goldstein).

and February 28, 2015, the time period during which FairPoint transitioned to the Docket 5903 Metrics and when the strike ended. Under the MOU, FairPoint will train and require its call center representatives to inform any customer calling to report a service interruption or outage that a bill credit will be available if the repair is not completed in 24 hours and the customer calls back to request the credit. Finally, the MOU states that the Department intends to explore ways that all companies subject to Board Rule 7.609(C) can improve their handling of bill credits, taking into account individual provider systems and operational needs.¹²

CAF II

The MOU commits FairPoint to accepting CAF II program funding for Vermont – approximately \$52.7 million in federal funding over six years that will bring increased broadband speeds to approximately 28,400 addresses or customers within the state.¹³

The Department represents that FairPoint's commitment to accept CAF II funding was the Department's impetus for entering the MOU.¹⁴ The Department further represents that it expects that implementation of the CAF II broadband build-out will have a positive impact on service quality by extending FairPoint's fiber-based network.¹⁵

VI. NON-PARTY COMMENTS

Several comments were filed by DAN and ECFiber on a number of matters, such as pole attachment make-ready rules,¹⁶ carrier of last resort requirements, network back-up and reliability, and broader access to fiber capabilities. We have reviewed all of these comments and observe that, for the most part, they fall beyond the scope of this proceeding. The issues raised by DAN and ECFiber may warrant consideration in future proceedings, such as in the

12. Exh. Pet. Joint-1 at 3.

13. The MOU further provided that if FairPoint failed to request CAF II funding, the MOU would become null and void. FairPoint accepted the CAF II funding, as required by the MOU, in August 2015.

14. Tr. 9/17/15 at 55 (Porter).

15. Christine Peterson, Department ("Peterson") MOU pf. at 1; tr. 9/17/15 at 76-77 (Fastiggi); tr. 9/17/15 at 77-78 (Peterson).

16. "Make-ready rules" are rules, terms, and conditions that govern the access that a third party may have to a utility's poles. *See, e.g.*, Board Rule 3.708.

investigations that FairPoint and the Department have agreed to pursue as part of the MOU. We therefore do not address these issues in today's Order.

VII. DISCUSSION AND CONCLUSION

We find the MOU to be a reasonable settlement between the Department and FairPoint for several reasons. Overall, the MOU contains sufficient benefits for Vermont residents and serves the public interest of Vermont. First, the MOU compelled FairPoint to accept CAF II funding. This single commitment has guaranteed that approximately \$52.7 million in federal CAF II funding will flow into Vermont over the next six years. This funding will be supplemented by FairPoint's own investments in the build-out of broadband in Vermont. With this funding, FairPoint can and must build out its broadband network in a manner that will both enhance FairPoint's telephone service and extend broadband access to approximately 28,400 locations. This is a substantial benefit to Vermont residents.

We recognize that certain commenters have argued that the 10/1 standard associated with the CAF II program is not the most current, cutting-edge standard for Internet service and speeds. In this regard, the FCC itself has indicated that half of the connections are already at 25/3.^{17,18} However, CAF II funding will enable FairPoint to bring broadband service to areas where no broadband service is currently available. This improvement will serve Vermonters and is superior to the status quo. Moreover, there is no indication as to how or when consumers otherwise would be served and at what speeds, if FairPoint were to decline the CAF funding. To facilitate the monitoring of FairPoint's implementation of CAF II, we will require that FairPoint provide the Board with copies of all reports that it files with the FCC as part of the CAF II program.

We further find the MOU to be a reasonable settlement because FairPoint has made necessary improvements to its SS7 network. The Department's expert testified that, with the

17. FCC Report and Order (released 12/18/14) at 6, fn. 31 ("Current deployment data indicate that 92% of Americans in urban areas, and 47% in rural areas, have access to fixed broadband with speeds of at least 25/3 Mbps. SBI Data, as of December 31, 2013".).

18. At a standard of 25/3, a user can download data from the Internet at a speed of 25 megabits per second and upload data at the speed of 3 megabits per second.

operational and structural improvements that FairPoint has already made and the improvements it continues to make, the SS7 network is in satisfactory condition. With these improvements, the Department judges that FairPoint has reduced the risk of a similar SS7 network problem recurring. We are persuaded that FairPoint's SS7 repairs and upgrades satisfactorily ensure the stability and reliability of its network.

While we recognize that certain commenters are dissatisfied with the MOU's treatment of the SS7 network, the evidence does not demonstrate that it is necessary to require FairPoint to make additional changes to its SS7 network. We find that the system and operational improvements made by FairPoint have satisfactorily remedied the problems that led to the failure of the network in November 2014.

Regarding the service quality issues that FairPoint customers have experienced, we continue to have some concerns. We observe that FairPoint's service quality appears to have improved since the initiation of this proceeding and that FairPoint has achieved some improvements in its service quality metrics to date. We also observe that the MOU slightly modifies certain reporting requirements associated with the Docket 5903 Metrics. We caution FairPoint that we expect it to make every effort to achieve the Docket 5903 Metrics, as we do all other telecommunications providers. We find that the metrics-related modifications proposed in the MOU are acceptable, given the overall balance of negotiated terms of the MOU.

Finally, with respect to bill credits, we continue to be concerned about FairPoint's interpretation and application of Board Rule 7.609(C). However, the Department has committed to investigate the matter further, and FairPoint has committed to providing approximately 22,000 customers with bill credits and to training its customer service representatives to better inform customers of the availability of those credits. Given these commitments and the balance of all other commitments made under the MOU, we accept this element of the MOU as reasonable.

VIII. ORDER

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

1. The August 10, 2015, Memorandum of Understanding ("MOU") between Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), and the Vermont Department of Public Service ("Department") is approved.

2. FairPoint shall issue bill credits, pursuant to Board Rule 7.609(C), to current FairPoint customers who had service outages of more than twenty-four hours during the period April 1, 2013, through February 28, 2015, based on the outage definition contained in the MOU, and FairPoint shall provide to the Board and the Department an accounting of all such bill credits paid to FairPoint customers within one month of issuing the final bill credit.

3. FairPoint will train its customer service representatives to inform customers of their right to receive a bill credit and the required procedures when they call to report an outage; FairPoint will provide its customers with similar notice through a bill message within three months of the entry of this Order.

4. FairPoint shall confirm in writing to the Board and the Department the measures it has taken to improve its SS7 network infrastructure and maintenance pursuant to the terms of the MOU within three months of the entry of this Order.

5. Within 30 days of the entry of this Order, the Parties shall file in Docket No. 8337 a request that the current Incentive Regulation Plan ("IRP") be extended until the Board issues final orders in Docket No. 8337 regarding the new IRP and in the proceeding to be initiated to address potential changes to the scope and applicability of the Docket 5903 Metrics.

6. Within 60 days of the entry of this Order, FairPoint shall file a petition, in accordance with the MOU, to open a proceeding:

- (1) requesting that service quality reporting requirements apply only to FairPoint customers without access to an alternative telecommunications provider (to be defined in that proceeding),
- (2) seeking an evaluation of the continued appropriateness of, and possible alternatives to, the existing Docket 5903 "% cleared in 24 hours" metric, and
- (3) to the extent necessary, also incorporate the

results of the proceeding as an amendment to FairPoint's Incentive Regulation Plan.

7. FairPoint shall file with the Board and the Department copies of each of the reports it files with the Federal Communications Commission regarding the award of CAF II funding to FairPoint.

Dated at Montpelier, Vermont, this 18th day of December, 2015.

<u>s/ James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/ Margaret Cheney</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/ Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: December 18, 2015

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: psb.clerk@vermont.gov)

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.