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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Vermont Legal Aid request for moratorium on utility and telecommunications shutoffs during State of Emergency

Case No. 20-0703-PET

**EIGHT RLECS' OPPOSITION TO DEPARTMENT'S MOTION
TO EXTEND DISCONNECTION MORATORIUM**

Eight Vermont rural local exchange carriers (the "Eight RLECs")¹ hereby oppose the "Department of Public Service Request to Extend the Temporary Moratorium," which the Department of Public Service ("Department") filed in this proceeding on July 22, 2020.

Summary

1. The Department offers no factual basis for its extension request. In fact, the conditions that supported the Commission's grant of the temporary moratorium have materially and substantially changed since the Commission's Order of March 18, 2020, and no longer support a moratorium on utility disconnections in Vermont.

2. The Department's 11th-hour motion comes too late to avoid customer confusion regarding the Commission's disconnection policies. Because of customer billing cycles, the Eight RLECs have already begun delivering timely disconnection notices to affected customers in accordance with the requirements of Commission Rules 7.620 & 7.622. To rescind those notices now and postpone further action pending a new moratorium period will produce uncertainty and confusion among the affected customers and will undermine trust and confidence in the PUC's policies and in the business practices of the Eight RLECs.

¹ Franklin Telephone Company, Inc., Ludlow Telephone Company d/b/a TDS Telecom, Northfield Telephone Company d/b/a TDS Telecom, Perkinsville Telephone Company, Inc. d/b/a TDS Telecom, Shoreham Telephone LLC d/b/a Otelco, Topsham Telephone Company, Inc., Vermont Telephone Company, Inc. d/b/a VTel, and Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom.

As discussed further below, the Department's Motion should be denied.

1. The Department's Motion Lacks a Factual Basis

The Department has offered no factual basis to support its Motion for an additional moratorium extension, apparently believing that the facts that supported the Commission's Moratorium Order and its two earlier extensions are sufficient to support an additional extension. However, there has been a material change in the circumstances that supported the Commission's Moratorium Order and its earlier extensions, such that current conditions do not support a further extension of the Order.

Motions made to the Commission "shall state with particularity the grounds therefor including a concise statement of the facts and law relied on, and shall set forth the relief or order sought."² A motion to the Commission must be denied when a party "has failed to specify adequately the facts upon which it bases its Motion, and has failed to identify any supporting provisions of law."³

The Department fails to specify any facts that support its Motion and ignores the substantial change in economic conditions in Vermont since the Commission's last extension order.

Under 3 V.S.A. § 810(4), the Commission may take administrative notice of judicially cognizable facts.⁴ A judicially cognizable fact

must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.⁵

² V.R.C.P. 7(b)(1) (made applicable to Commission proceedings by PUC Rule 2.103).

³ *In re Vt. Elec. Power Co.*, Docket No. 6860, Order Re: New Haven Motion to Require VELCO, GMP, and ISO-NE to Seek Regional Cost Support (Vt. Pub. Serv. Bd., Apr. 21, 2004) ("VELCO I"), at 4-5.

⁴ 3 V.S.A. § 810(4); see *In re Vt. Elec. Power Co.*, Docket No. 6860, Order Re: Request to Take Administrative Notice of § 202(f) Determination (Vt. Pub. Serv. Bd., Oct. 6, 2004) ("VELCO II"), at 4.

⁵ V.R.E. 201; see *VELCO II, supra*, at 4.

The Eight RLECs ask the Commission to take administrative notice of the following facts, which are generally known within the Commission's jurisdiction and which are capable of accurate and ready determination by resort to reliable sources.

1. Although Vermont remains in a state of emergency following Governor Scott's declaration on March 13, 2020,⁶ the Governor on June 15, 2020, issued an Amended and Restated Emergency Order that has allowed most businesses to reopen, so long as they are able to adhere to social-distancing requirements.⁷ The new Order extends a series of orders that have eased reopening requirements for all economic sectors.⁸

2. Even though the reopening of Vermont's economy remains in an early phase, Vermont's unemployment rate has shown dramatic declines, from a high of 16.5% in April to the current rate of 9.4% in June.⁹ The month of June saw the addition of 12,500 jobs to Vermont's economy.¹⁰ While many Vermonters continue to experience challenges in employment and income, the overall economic situation reflects a substantial and material improvement in the time since the Commission issued its original Moratorium Order and the two subsequent extensions.

3. On July 2, 2020, the Vermont General Assembly passed, and Governor Scott signed, H.966, which in Section 20 appropriates the sum of \$8 million to the Department "for the purpose

⁶ State of Vermont, Executive Order 01-20, "Declaration of State of Emergency in Response to COVID-19 and National Guard Call-Out" (Mar. 13, 2020).

⁷ State of Vermont, Amended & Restated Executive Order 01-20, "Declaration of State of Emergency in Response to COVID-19 and National Guard Call-Out" (June 15, 2020); *see also* Press Release (June 15, 2020) (noting that "caution is still warranted, but that the state has most sectors open to some capacity and has incrementally eased restrictions on activities.").

⁸ *See, e.g.*, State of Vermont, Addendum 9 to E.O 01-20, at 3 ("authoriz[ing] lodging facilities to resume acceptance of reservations for stays and events beginning June 15, 2020, subject to further action as needed to respond to continued COVID-19 response"); *see also* Press Release (June 19, 2020) (authorizing "venues [to] expand capacity for events and dining to 50% of approved occupancy size or one person per 100 square feet of customer facing space . . . [which] will allow for indoor events of up to 75 people and outdoor organized events of up to 150.").

⁹ T. McQuistin, "Unemployment rate falls over 3 points to 9.4 percent in June" (Vermont Business Magazine, July 17, 2020), available at <https://www.vermontbiz.com/news/2020/july/17/unemployment-rate-falls-over-3-points-94-percent-june>.

¹⁰ *Id.*

of simultaneously minimizing financial hardship caused by the COVID-19 public health emergency and also mitigating utility rate increases ultimately shared by all ratepayers.”¹¹

These significant developments, taken together, will materially mitigate the risk of widespread disconnection of customers from utility services. The Department's failure to address these developments undermines the merits of the Department's Motion.¹²

The Vermont state of emergency is scheduled to expire on August 15, 2020, shortly after the Commission's own Disconnection Moratorium expires on July 31, 2020. The Department has not established a basis for the Commission to continue the moratorium past the state of emergency, and certainly not through the end of September. Accordingly, the Commission should deny the Department's Motion.

2. The Department's Motion Comes Too Late to Avoid Customer Confusion and Damage to the Eight RLECs' Business Reputations.

The Commission's Disconnection Moratorium is presently scheduled to expire on July 31, 2020. The Department's Motion, filed just nine (9) days before the scheduled expiration, and with comments due just four (4) days before the scheduled expiration, comes too late to prevent some affected customers from receiving disconnection notices. Granting the requested extension at this late date will cause undue customer confusion about the Commission's regulatory policies and will damage customer confidence and trust in the business practices of the Eight RLECs.

The Department's Motion, if granted, would have additional adverse consequences. The Eight RLECs honored the FCC's Keep Americans Connected Pledge, which expired by its terms

¹¹ H.966 (An act relating to COVID-19 funding and assistance for broadband connectivity, housing, and economic relief) (eff. July 2, 2020), at § 20 (<https://legislature.vermont.gov/Documents/2020/Docs/BILLS/H-0966/H-0966%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>).

¹² The Department's July 1st filing in this proceeding acknowledges the Department's imminent receipt of COVID-19 related public funds to alleviate the impact of financial hardship on utility customers. *See* Comments of the Department of Public Service (July 1, 2020), at 1. But neither the July 1st filing nor the present Motion acknowledges the impact of these public funds on the continued need for a Disconnection Moratorium.

on June 30, 2020. They have complied with the Commission's Disconnection Moratorium, with the result that many customers have now accrued more than three months of arrearages. Despite improving economic conditions, the longer these arrearages continue to accrue, the harder it will be for customers to pay down their accounts, even under reasonable payment plans. For seasonal customers, who activate their accounts only during the summer season, a moratorium that extends through September 30 would have the effect of allowing them to forebear from payment without any service consequences for the entire period for which they received service in 2020. Extending the Disconnection Moratorium to nearly five (5) months in duration is likely to result in a greater number of service disconnections of customers and bad debt for service providers.

In light of the imminent expiration of the Disconnection Moratorium, the Eight RLECs have begun implementing the plans they filed with the Commission on June 19, 2020. The Eight RLECs have identified customers whose financial hardship has led to unusually high arrearages and have begun entering into reasonable repayment plans with these customers for the purpose of avoiding a disconnection of service. The Eight RLECs emphasize that they are working with their customers to the greatest extent possible to avoid disconnections. At the same time, the Eight RLECs have identified customers for whom disconnection from service is the appropriate option and have begun delivering disconnection notices in accordance with the timing requirements of Commissions Rules 7.620 and 7.622. For some customers of some companies, scheduled disconnections will begin during the first week of August.

If granted, the Department's late Motion will throw repayment and disconnection schedules into disarray. Customers will lose trust in the Commission's ability to make and enforce orderly regulatory policies and will lose confidence in the Eight RLECs' ability to conduct their business in an orderly manner. Especially at a time when confusion and uncertainty affect every decision

that Vermonters make, a sudden change in regulatory direction will further undermine the public's confidence in public institutions and public service companies.

The Department filed an 11th hour Motion that lacks a proper factual foundation and that creates a significant risk of customer confusion and distrust in the Commission's policymaking.

The Commission should deny the Department's Motion.

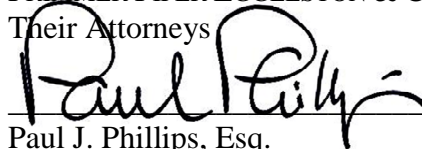
DATED at Montpelier, Vermont, this 27th day of July, 2020.

Respectfully submitted,

Franklin Telephone Company, Inc., Ludlow Telephone Company, Northfield Telephone Company, Perkinsville Telephone Company, Inc., Shoreham Telephone LLC, Topsham Telephone Company, Inc., Vermont Telephone Company, Inc. d/b/a VTel, and Waitsfield-Fayston Telephone Co., Inc. d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom

By: PRIMMER PIPER EGGLESTON & CRAMER PC,
Their Attorneys

By:

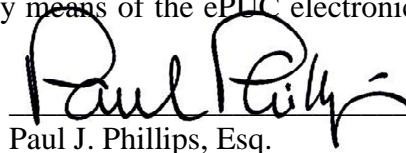


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CERTIFICATE OF SERVICE

I, Paul J. Phillips, Esq., certify that on July 27, 2020, I caused electronic copies of the "Eight RLECs' Opposition to the Department's Motion to Extend Moratorium" to be delivered to all participants in Case No. 20-0703-PET by means of the ePUC electronic filing system of the Vermont Public Utility Commission.

DATED: July 27, 2020



Paul J. Phillips, Esq.